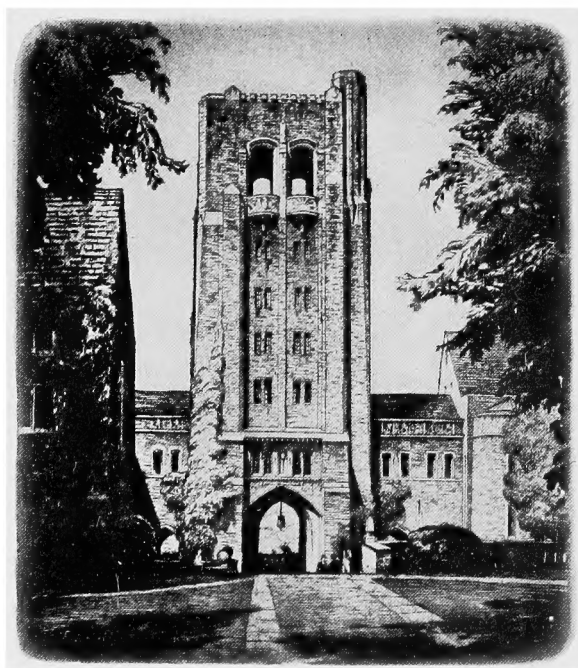


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THE LAW OF THE
PUBLIC SCHOOL SYSTEM
OF THE
UNITED STATES

THE LAW OF THE
PUBLIC SCHOOL SYSTEM
OF THE
UNITED STATES

BY

HARVEY CORTLANDT VOORHEES

OF THE BOSTON BAR

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ACTIONS," EDITOR OF "STIMSON'S LAW DICTIONARY,"
REVISED EDITION

BOSTON
LITTLE, BROWN, AND COMPANY
1916

137479
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Norwood Press

Set up and electrotyped by J. S. Cushing Co., Norwood, Mass., U.S.A.
Presswork by S. J. Parkhill & Co., Boston, Mass., U.S.A.



TO THE
HONORABLE JOHN WALSH
WHOSE EXAMPLE AND LEGAL ATTAINMENTS HAVE
BEEN AN INSPIRATION TO THE AUTHOR
AND MANY OTHERS THIS BOOK IS
GRATEFULLY INSCRIBED

PREFACE

OUR national greatness, and the permanence of our American government, are to a great extent founded in our system of public schools. In these schools pupils learn patriotism and obedience to constituted authority to an extent untaught and unpracticed in many homes. The acquirement of knowledge is offered in a system which only enormous funds and the painstaking endeavors of selected instructors could make possible. As the State furnishes so it benefits. The child of today is the statesman of tomorrow. Competence is so general that no man is considered unreplaceable.

But the State does not make scholars. It only offers the means of acquiring scholarship. The years of nurture by our government have created an almost unanimous desire for a college education, whereas in the earlier days the main educational desire was often expressed as an ability to "read, write and cipher." Parents have seen the folly of superficiality and are determined that their children shall be thorough.

Improvement in educational matters has been gradual, but aggressive. Compulsory attendance, guarded by attendance or truant officers, is a modern feature, but has

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been so widely adopted that now but two States of our Union are without such law. There should be none. It is to be regretted, however, that some States, although adopting a compulsory attendance law of great possibilities for the uplift of the citizens and effective diminishment of illiteracy, have almost nullified the possible beneficial effect by the adoption of provisos which render the laws almost nugatory. Gradual improvement of the effectiveness of these laws is hoped for.

The aggressiveness with which our school system has grown has naturally met with opposition. Constitutional and statutory rights are jealously maintained. The result has been an enormous amount of litigation in school matters, and it is the purpose of this work to make an orderly presentation of the judicial precedents for the convenient reference of those interested. A few references have been made to decisions of school tribunals where either the facts are peculiar, or no decision to the same effect has been found in the reported cases. No apology is offered for the presentation of such decisions. The judicial pronouncement is that such decisions have the conclusive quality of "a judgment pronounced in a legally created court of limited jurisdiction."¹ The inaccessibility alone of such decisions would seem to make this presentation desirable.

In the various States are several hundred thousand school officers² who, in their official duties, are called upon to decide the legality of expulsion or suspension of pupils, the employing and dismissal of teachers, and to

¹ *Thompson v. Board of Education*, 57 N. J. L. 628; 31 Atl. 168.

² Alabama alone has about eleven thousand district school trustees.

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make many contracts relating to school affairs and property. Slight inadvertence, indiscretion, or lack of knowledge may make them personally liable. They should know their rights and liabilities. To them, and to the members of the legal profession who are to care for such litigation it is hoped that the efforts of the Author will be found helpful.

HARVEY CORTLANDT VOORHEES.

BOSTON, July 1, 1916.

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THE LAW OF THE PUBLIC SCHOOL SYSTEM OF THE UNITED STATES

CHAPTER I

GENERAL PRINCIPLES

§ 1. Duty of Educating.

The moral duty of parents to educate their children as well as possible has been strongly and persuasively inculcated by writers on natural law;¹ and Solon was so deeply impressed with the force of the obligation, that he even excused the children of Athens from maintaining their parents, if they had neglected to train their children up to some art or profession.²

The education of children in a manner suitable to their station and calling is a branch of parental duty, of imperfect obligation generally in the eye of the municipal law, but of very great importance to the welfare of the state. Without some preparation made in youth for the sequel of life, children of all conditions would probably become idle and vicious when they grow up,

¹ Puffendorf, b. 4, Ch. 11, sec. 5; Paley's Moral Philosophy, 224, 225; 2 Kent's Com., 195, 196.

² Plutarch's Life of Solon.

either for want of good instruction and habits, and the means of subsistence, or from want of rational and useful occupation. A parent who sends his child into the world uneducated, and without skill in any art or science, does a great injury to mankind, as well as to his own family; for he defrauds the community of a useful citizen, and bequeaths to it a nuisance.

The duty of educating children was a fundamental one with the early settlers of New England, and Massachusetts was the first of the colonies to establish legal provisions for the fulfilment of this obligation, the original act having been passed in 1647.¹ In the develop-

¹ See Shurtleff's Records of Massachusetts Bay, V. II., 203; Winthrop's History of New England, V. II., 215; *Jenkins v. Andover*, 103 Mass. 94.

In Massachusetts by the statute of 1789, Chapter 19, a grammar school was required to be maintained by every town having two hundred families or householders, for the use and benefit of all the inhabitants of the town. And so zealously was the right to education guarded that at the Circuit Court of Common Pleas, April term, 1817, the following indictment was returned by the grand jury:

"The jurors, &c., on their oath present, that the town of Dedham in said county of Norfolk, at said Dedham, on the 26th day of April, 1816, and from that time, to the 26th day of April, 1817, did contain, and still doth contain two hundred families and upwards; and that said town of Dedham, at said Dedham, did, during all the time from said 26th of April, 1816, to said 26th of April, 1817, neglect, and still does neglect the procuring and supporting of a grammar school-master, of good morals, well instructed in the Latin, Greek, and English languages, to instruct children and youth in said languages; which is in subversion of that diffusion of knowledge, and in hindrance of that promotion of education, which the principles of a free government require, and which the constitution of the commonwealth enjoins; against the peace and dignity of said commonwealth, and the form of the statute in such case made and provided." *Com. v. Dedham*, 16 Mass. 141.

ment of this plan of public education we find at the time of the Revolution, two Grammar Schools and three Writing Schools in the City of Boston;¹ and thus was formed the nucleus of the public school system in the United States. In England there was no adequate provision for public elementary education until the Elementary Education Act of 1870, which made provision for such a system in England and Wales.

§ 2. Power to Establish Public Schools.

The power of the several States to establish and maintain systems of common schools, to raise money for that purpose by taxation, and to govern, control, and regulate such schools when established, is a power not delegated to the Federal government, nor prohibited by its constitution to the several States, therefore such power is reserved to the States respectively or to the people.² Consequently the public school system of a State usually originates under the constitution of that particular State.³

§ 3. Constitutional Provisions.

Many of the States have provided for the maintenance of public schools, in constitutional provisions.⁴

¹ Snow's History of Boston, 350; Amer. Jour. of Educ., 1826, 210. The earliest trace of our system of free schools is to be found on the Boston records under the date of April 13, 1635, where it is stated to have been "agreed upon that our brother, Philemon Purmont, shall be intreated to become schoolmaster, for the teaching and nurturing of children with us." Snow's History of Boston, *supra cit.*

² Marshall v. Donovan, 10 Bush (Ky.) 681.

³ Cory v. Carter, 48 Ind. 327.

⁴ Ala., Art. 4, sec. 33; Ark., Art. 14; Cal., Art. 9, sec. 5; Colo., Art. 9, sec. 2; Del., Art. 10, sec. 1; Conn., Art. 8, sec. 2; Fla.,

Some of the State constitutions declare that the people have a right to education, which it is the duty of the State to guard and maintain,¹ "without distinction of race, color,² caste³ or sex."⁴ Under a State constitution requiring the common school system to be uniformly open to all, such uniformity exists when all schools of the same grade have the same system of studies and discipline, and require uniform qualifications for admission.⁵

In Massachusetts, the constitution provides:⁶ "Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties;

Art. 12, sec. 1; Ga., Art. 8, sec. 1; Ida., Art. 9, sec. 1; Ill., Art. 8, sec. 1; Ind. Art. 8, sec. 1; Ia., Art. 9, div. 1, sec. 12; Kan., Art. 6, sec. 2; Ky., Art. 11, sec. 1; La., Acts 1880, sec. 224; Me., Art. 8, sec. 1; Md., Art. 8; Mass., Part 2, Ch. 5, sec. 2; Mich., Art. 13, sec. 4; Minn. Art. 8, sec. 2; Miss., Art. 8, sec. 1, 5-8; Mo., Art. 11, sec. 1; Mont., Art. 11, sec. 1; Neb., Art. 8, sec. 6; Nev., Art. 11, sec. 2; N. H., part 2, Art. 83; N. J., Art. 4, sec. 7; N. Y., Art. 9, sec. 1; N. C., Art. 1, sec. 27, Art. 9, sec. 2; N. D. 147; Ohio, Art. 1, sec. 7, Art. 6, sec. 1 and 2; Okla., Art. 13, sec. 1; Ore., Art. 8, sec. 3; Pa., Art. 10, sec. 1; R. I., Art. 12, sec. 1, 2, 4; S. C., Art. 10, sec. 3, 11; S. D., Art. 8, sec. 1, Art. 22, sec. 1; Tenn., Art. 11, sec. 12; Tex., Art. 7, sec. 1; Utah, Art. 3, sec. 4, Art. 10, sec. 1; Vt., Ch. 2, Art. 41; Va., Art. 8, sec. 3, 7, 8; Wash., Art. 9, sec. 1, Art. 26, sec. 1, Art. 27, sec. 1; W. Va., Art. 12, sec. 1; Wis., Art. 10, sec. 3; Wyo., Art. 7, sec. 1. The provisions in constitutions of Montana, North Dakota, South Dakota, Utah, Washington, and Wyoming are irrevocable without the consent of the United States; see U. S. Statutes of 1889, Ch. 180.

¹ N. C., Art. 1, sec. 27; Wash., Art. 9, sec. 1; Wyo., Art. 1, sec. 23.

² Colo., Art. 9, sec. 8; Ida., Art. 9, sec. 6; Wash., Art. 9, sec. 1; Wyo., Art. 7, sec. 10.

³ Wash., Art. 9, sec. 1.

⁴ Ida., Art. 9, sec. 6; Wyo., Art. 7, sec. 10.

⁵ *Cory v. Carter*, 48 Ind. 327.

⁶ Ch. 5, sec. 2.

and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments, among the people.”

The Constitution of the United States does not mention the right or duty of education, and it therefore would seem beyond the power of the Federal government to prescribe, limit or regulate the common schools of the several States.¹ And although a treaty to that effect would be valid in favor of a foreign power, it would not be binding upon the States, except as a consequence of the war power.²

In New York, there is no constitutional right to education, the right being founded entirely upon legislation, and as such is subject to such limitations

¹ *Marshall v. Donovan*, 10 Bush (Ky.) 681; *Griswold v. Hepburn*, 63 Ky. 20; *Tucker's Limitations on the Treaty-Making Power*, 21, 380.

² *Stimson's Const. b. III, sec. 50.*

as the legislature in its wisdom, may from time to time see fit to make.¹

§ 4. What is a School?

A school is an institution of learning of a lower grade than a college or a university. It is a place of primary instruction.² The terms "public schools" and "common schools" are synonymous,³ but such terminology is not limited to a school of the lowest grade. It includes all schools from the primary to the high schools, but it does not include one founded by a charitable bequest which vests the order and superintendence of it in a board of trustees,⁴ or those devoted exclusively to teaching advanced pupils in the classics, and in all of the higher branches of study usually included in the curriculum of the colleges.⁵

To constitute a school there must be a teacher and pupils. And so it has been held that a meeting of persons assembled for the purpose of singing together for their common improvement in the art of singing, but without a teacher, is not a school within the statutory meaning,⁶ but that a singing school, with a teacher and pupils is within the meaning of the statute.⁷

¹ *Dallas v. Fosdick*, 40 How. Pr. (N. Y.) 240.

² *Bouv. L. Dict.*

³ *Roach v. St. Louis, &c.*, 77 Mo. 484; *People v. Board, &c.*, 13 Barb. (N. Y.) 410.

⁴ *Jenkins v. Andover*, 103 Mass. 94, 97.

⁵ *Powell v. Board, &c.*, 97 Ill. 378.

⁶ *State v. Gager*, 26 Conn. 607, 28 Conn. 232.

⁷ *Ibid.*

§ 5. What is a Public School?

A public or common school has been defined as one that is common and free to all children of proper age and capacity, and which is subject to, and under the control of, the qualified voters of a school district.¹ It has been held, however, that it is not inconsistent with a free public school system that school boards may fix a reasonable incidental fee for heating and lighting as a condition precedent to a pupil entering a public school.²

The characteristic features of public schools in the United States are: They are supported by general taxation, are open to all free of tuition expense, and are under the immediate control and superintendence of agents appointed by the voters of each town and city,³ or district.

In point of taxation the term "public schools" cannot be confined to those supported exclusively by municipal taxation. In Massachusetts, town schools have been for many years in part supported by legislative grants out of the school fund of the commonwealth, as recognized by the eighteenth article of amendments to the constitution. Nor can the term be limited to schools supported wholly by the public, for the original statute of 1647 provided for the support of the schoolmaster, at the discretion of the selectmen, by a contribution from the parents of the

¹ *School District, &c., v. Bryan*, 51 Wash. 498, 99 Pac. 28.

² *Roberson v. Oliver*, 189 Ala., 82, 66 So., 645.

³ *Merrick v. Amherst*, 12 Allen (Mass.) 508; *Collins v. Henderson*, 11 Bush (Ky.) 74.

scholars, or the masters of such as were under apprenticeship, instead of by a uniform tax upon all the inhabitants of the towns; and they may, in later times, derive support from voluntary contributions. These are the schools to which the eighteenth article of amendments to the constitution of Massachusetts applies; schools which towns are required to maintain, or authorized to maintain, though not required to do so, as a part of our system of common education, and which are open and free to all the children and youth of the town in which they are situated, who are of proper age or qualifications to attend them.

This class of schools does not include private schools which are supported and managed by individuals; nor colleges or academies organized and maintained under special charters for promoting the higher branches of learning, and not especially intended for, nor limited to, the inhabitants of a particular locality.¹

A common school is one that begins with the rudimental elements of an education, as contradistinguished from academies and universities that begin with the higher branches of education.² And the term "public schools" as generally used is not limited to schools of the lowest grade but may include high schools as well.³ A normal school is also, in an enlarged sense, a public school.⁴

The fact that a tuition fee is charged will not *ipso*

¹ *Jenkins v. Andover*, 103 Mass. 97.

² *Powell v. Board, &c.*, 97 Ill. 378.

³ *Jenkins v. Andover*, 103 Mass. 97.

⁴ *People v. Crissey*, 45 Hun (N. Y.) 19.

facto take a school out of its class as a public school.¹ But schools controlled by an incorporated board of trustees are not public schools;² nor is a school kept by a society,³ or open only to poor orphan children, although controlled by a city.⁴

Even though the land on which a schoolhouse stands is owned by the Catholic Church, and is located in a district where the people are of that faith, and which faith is taught in the school without objection, and the Church funds are contributed to the salary of the teachers, if the school receives its share of the school fund, district meetings are annually held, teachers hired and paid by the school board, and the business of the school conducted in the usual manner of school districts, such school is a district school and not a parochial school.⁵

§ 6. What is Education?

Education is a broad and comprehensive term. It has been defined as the process of developing and training the powers and capabilities of human beings. It is the bringing up, physically or mentally, of a child, or the preparation of a person, by some due course of training, for a professional or business life, or other

¹ *Blake v. Mayor, &c.*, 19 Q. B. D. 79; *Le Couteux v. Buffalo*, 33 N. Y. 333.

² *Hall's Free School v. Horne*, 80 Va. 470; *Elsberry v. Seay*, 83 Ala. 614, 3 So. 804.

³ *People v. Board, &c.*, 13 Barb. (N. Y.) 400.

⁴ *In re Malone's Estate*, 21 S. C. 435; *State v. Dovey*, 19 Nev. 396, 12 Pac. 910.

⁵ *Richter v. Cordes*, 100 Mich. 278, 58 N. W. 1110.

calling.¹ It may be directed particularly to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it refers to them all.² It is not necessary that an "English" education be limited to the study of the English language. An education acquired through the medium of the English language, even though embracing Latin and German, is an English education.³ And a "good common school education" includes a high school education.⁴

§ 7. Father's Duty to Educate.

It is the common-law rule that education is a duty owed by the parent to the child. But, while the duty rested upon the parent to educate his child, the law would not attempt to force him to discharge this duty, and the child, so far as education was concerned, was completely at the mercy of the parent. Therefore, at common law the child had no right to demand an education at the hands of the parent, and this is the state of the law generally in the United States unless there is a State law, either constitutional or statutory, which is held to alter or abolish it.

Where under a State law a father is bound to edu-

¹ *Clavering v. Ellison*, 7 H. L. Cas. 713; *State ex rel. Henderson v. Lesueur*, 99 Mo. 552, 13 S. W. 237.

² *Williams v. MacDougall*, 39 Cal. 80; *Mount Hermon Boys School v. Gill*, 145 Mass. 139, 146, 13 N. E. 354; *Peck v. Claffin*, 105 Mass. 420; *Merrill v. Emery*, 10 Pick. (Mass.) 507; *Ruohs v. Backer*, 6 Heisk. (Tenn.) 395; *Cook v. State*, 90 Tenn. 407, 16 S. W. 471. For essays on legal education see Jones' Index to Legal Periodicals.

³ *Board, &c., v. Welch*, 51 Kan. 806, 33 Pac. 654.

⁴ *Cook v. Board, &c.*, 266 Ill. 164, 107 N. E. 327.

cate his children he must do so out of his own estate, even if the children have ample separate resources,¹ or even if his child has a separate estate of which he is guardian his duty is, nevertheless, to educate the child out of his own estate.² A father who is bound to educate his minor child by reason of a State law is bound to pay a reasonable sum to another person who does it for him with his knowledge and consent.³

Usually a person who stands in *loco parentis* is bound to educate a child to whom he stands in such relation.⁴ And while a stepfather, merely by virtue of the marriage does not acquire such relation, he does acquire it if he assumes the parental relation and holds the children out to the world as members of his own family.⁵

§ 8. Mother's Duty to Educate.

While the obligation is upon the father to educate the child, and does not, in the lifetime of the father, in any manner rest upon the mother, still there is an

¹ *Englehardt v. Yung's Heirs*, 76 Ala. 534; *Fuller v. Fuller*, 23 Fla. 236, 2 So. 426; *Hines v. Mullins*, 25 Ga. 696; *Bedford v. Bedford*, 136 Ill. 354, 26 N. E. 662; *Addison v. Bowie*, 2 Bland (Md.) 606; *Whipple v. Dow*, 2 Mass. 415; *Dawes v. Howard*, 4 Mass. 97; *Pearce v. Olney*, 5 R. I. 269; *Presley v. Davis*, 7 Rich. Eq. (S. C.) 105; *Linskie v. Kerr*, 34 S. W. (Tex.) 765; *Contra: In re Marx*, 5 Abb. N. C. (N. Y.) 224.

² *Kinsey v. State*, 98 Ind. 351; *Tompkins v. Tompkins' Ex'rs*, 18 N. J. Eq. 303; *Buckley's Adm'r v. Howard*, 35 Tex. 565.

³ *Thompson v. Dorsey*, 4 Md. Ch. 149.

⁴ *Schrimf v. Settegast*, 36 Tex. 296.

⁵ *Mowbry v. Mowbry*, 64 Ill. 383; *Mulhern v. McDavitt*, 16 Gray (Mass.) 404; *In re Besondy*, 32 Minn. 385, 20 N. W. 366; *Eickhoff v. Sedalia, &c.*, 106 Mo. App. 541, 80 S. W. 966; *Beard's Estate*, 1 Pa. Co. Ct. 283.

obligation growing out of the relation of husband and wife, and parent and child, resting upon the wife and mother, demanding her co-operation with the husband in everything that is necessary for the welfare of the child. If the father is, by a good reason, required to abstain from conduct which would injure, and possibly destroy, the entire benefits of the public school system, the mother, for like reasons, must be required to desist, and her conduct may be a good reason for causing both the child and the father to lose the benefits of the school fund.¹

In a case where the child is free from fault, and the father is obedient to the law, it does look extremely hard that the willful misconduct of the mother should thus bring distress upon two innocent persons; but it is better that they should suffer, than that an institution in operation for the public good should be entirely subverted and destroyed, as would certainly be the result if the mother of every child in attendance on the schools were permitted whenever disposed to enter the schoolroom and upbraid the teacher in the presence of the pupils, or do other acts subversive of discipline and good order.²

Although the mother, during the time the father holds the position as head of the family, must refrain from such acts as tend to destroy discipline in the public schools, she does not occupy such a position of custody and control of the child that an attendance order made on the father of a child can on the death

¹ Board, &c., v. Purse, 101 Ga. 422, 28 S. E. 896.

² *Ibid.*

of the father be enforced against the mother,¹ although a mother who has the care and custody of a child may be convicted for neglecting to cause the child to attend school.² A widowed mother is not chargeable, however, for the education of her child where ample provision is otherwise made for its support.³

§ 9. Pecuniary Ability of Parent.

At common law the child's right to an education was dependent not only upon the will but upon the pecuniary ability of the parent. Even where elaborate public school systems have been established, thereby removing dependency upon the pecuniary ability of the parent, the right of a child to an education is still dependent on the will of the parent unless the rule of the common law has been abrogated either by constitutional or statutory enactment. If the parent is willing but has not the means to carry out this will, the child must go without an education.

§ 10. Child was Without Remedy.

The child was completely at the mercy of the parent in his attendance at school, in that he was remediless, for while the common law recognized the duty of educating a child as one of great importance, there was no remedy whatever provided for the child in case this duty was not discharged by the parent.

¹ *Hance v. Fairhurst*, 47 J. P. 53, 51 L. J. M. C. 139.

² *London School Board v. Jackson*, 7 Q. B. D. 502; *Mowbry v. Mowbry*, 64 Ill. 383; *Mulhern v. McDavitt*, 16 Gray (Mass.) 404.

³ *Mowbry v. Mowbry*, 64 Ill., 383; *Englehardt v. Yung's Heirs*, 76 Ala. 534; *In re Besondy*, 32 Minn. 385, 20 N. W. 366; *Osborn v. Allen*, 26 N. J. L. 388.

The child, at the will of the parent, could be allowed to grow up in ignorance and become more than a useless member of society, and for this great wrong, brought about by the neglect of his parents, the common law provided no remedy. Not only was no remedy given to the child, but no punishment was inflicted upon the parent for the failure to educate. In attempting to give a reason for this defect in the common law, Sir William Blackstone says: "Perhaps they thought it punishment enough to leave the parent, who neglects the instruction of his family, to labor under those griefs and inconveniences which his family, so uninstructed, will be sure to bring upon him."¹

§ 11. Parent may Direct Studies.

All parents and guardians being under the responsibility of preparing children intrusted to their care and nurture for the discharge of their duties in after life, law-givers in all free countries, and, with few exceptions, in despotic governments have deemed it wise to leave the education and nurture of the children to the reasonable direction of the parent or guardian. This is, and has ever been, the spirit of our free institutions. The State has provided the means, and brought them within the reach of all, to acquire the benefits of a common school education, but leaves it to parents and guardians reasonably to determine the extent to which they will render it available to the children under their charge.²

¹ 1 Bl. Com. 781.

² *Rulison v. Post*, 79 Ill. 567; *Stovall v. Johnson*, 17 Ala. 14; *Dawson v. Dawson*, 12 Iowa 512; *Porter v. Powell*, 79 Iowa 151,

§ 12. Non-Compulsory System.

The law providing for a non-compulsory public school system was not intended to create any new right in or give any new remedy to a child, it being settled that the presence of the child in school depends absolutely upon the consent and will of the parent; and school authorities are justified in dealing with the child in the light of this fact. Under such system it is simply the purpose of the State to aid the parent in discharging a duty by furnishing a fund to pay the expenses incident to discharging such duty.

Under a common school system which does not make education compulsory, the entire law, from the constitutional provision to the valid rule of the local school board, is that the right to attend school is not inherent in the child, but that it is the purpose of the law simply to provide a place where parents may discharge the obligation which they owe to their children to give them an education.

§ 13. Compulsory Education.

To discharge more thoroughly the obligation of the State to educate its citizens, statutes to enforce education have been enacted in every State except Georgia and Mississippi. It is competent for the legislature to compel parents to perform the natural duty of education owed to their children, and therefore com-

44 N. W. 295; *Tanner v. Skinner*, 11 Bush (Ky.) 120; *Gates v. Renfro*, 7 La. An. 569; *Gilley v. Gilley*, 79 Me. 292, 9 Atl. 623; *Hillsborough v. Deering*, 4 N. H. 86; *Dull's Estate*, 1 Leg. Op. (Pa.) 125. See also, Ch. 8, sec. 106, *infra*.

pulsory attendance laws are not necessarily unconstitutional as an invasion of a parent's rights and dominion.¹ But private tuition at home may be a sufficient substitute for attendance at school under such compulsory system.²

The great object of statutes enforcing education is that all children shall be educated, — not that they shall be educated in any particular way. To this end public schools are established, so that all children may be sent to them unless other sufficient means of education are provided for them. If a child has in any manner already acquired the branches of learning required by law to be taught in the public schools, the law does not compel any further instruction. If he has not acquired them, the law requires that he be instructed in them for the specified time each year. Sending a child to a private day school approved by the school committee is enough to comply with the requirements of the law, without further inquiry.

But if the person having a child under his control, instead of sending him to a public school or to a private day school approved by the school committee, prefers to have him instructed otherwise, it will be incumbent on him to show that the child has been instructed for the specified period in the required branches of learning, unless the child has already acquired them. This permits private instruction by tutor, governess or

¹ *State v. Bailey*, 157 Ind. 324, 61 N. E. 730; *State v. Jackson*, 71 N. H. 552, 53 Atl. 1021.

² *State v. Peterman*, 32 Ind. App. 665, 70 N. E. 550. *Contra*: *State v. Connort*, 69 Wash. 361, 124 Pac. 910.

parents, provided it is given in good faith and is sufficient in extent.¹

The statutes enacted making attendance at school compulsory usually provide that parents or persons having custody or control of children between certain ages shall compel them to attend school for a certain period during each school year.² And this requirement under some statutes permits the necessary attendance at private or other schools,³ subject, however, to a reasonable excuse for non-attendance. If such a person has a child under his control and neglects or refuses, without sufficient excuse, to cause the child to attend school for the prescribed period of time, a punishment is provided for such delinquency.⁴

Many jurisdictions have made special provisions for children employed in labor, usually providing that such children shall attend school a certain number of hours each week until they shall have attained a certain age and a prescribed proficiency in their studies.⁵

¹ *Com. v. Roberts*, 159 Mass. 372, 34 N. E. 402; *State v. McCaffery*, 69 Vt. 85, 37 Atl. 234.

² *Yale v. School District*, 59 Conn. 489, 22 Atl. 295; *Com. v. Roberts*, 159 Mass. 372, 34 N. E. 402; *Jackson v. Mason*, 145 Mich. 338, 108 N. W. 697; *State v. Hall*, 74 N. H. 61, 64 Atl. 1102; *People v. Hendrickson*, 125 N. Y. App. Div. 256, 109 N. Y. S. 403; *In re Compulsory Attendance Law*, 25 Pa. Co. Ct. 503; *State v. McCaffery*, 69 Vt. 85, 37 Atl. 234; *State v. MacDonald*, 25 Wash. 122, 64 Pac. 912.

³ *Quigley v. State*, 5 Ohio Cir. Ct. 638.

⁴ *Com. v. Roberts*, 159 Mass. 372, 34 N. E. 402; *State v. Jackson*, 71 N. H. 552, 53 Atl. 1021; *State v. McCaffery*, 69 Vt. 85, 37 Atl. 234; *Com. v. Hammer*, 9 Pa. Dist. 251; *State v. MacDonald*, 25 Wash. 122, 64 Pac. 912.

⁵ The Revised Laws of Massachusetts, Ch. 44, sec. 1, as amended by the acts of 1915, Ch. 81, sec. 1, provide that : "Every child be-

Compulsory education laws are not unconstitutional as an invasion of the natural right of the parent to govern and control his child, for the reason that it is competent for the legislature to compel parents to

tween seven and fourteen years of age, every child under sixteen years of age who does not possess such ability to read, write and spell in the English language as is required for the completion of the fourth grade of the public schools of the city or town in which he resides, and every child under sixteen years of age who has not received an employment certificate as provided in this act and is not engaged in some regular employment or business for at least six hours per day or has not the written permission of the superintendent of schools of the city or town in which he resides to engage in profitable employment at home, shall attend a public day school in said city or town or some other day school approved by the school committee, during the entire time the public schools are in session, subject to such exceptions as are provided for in sections four, five and six of this chapter and in section three of chapter forty-two of the Revised Laws, as amended by chapter four hundred and thirty-three of the acts of the year nineteen hundred and two, and by chapter five hundred and thirty-seven of the acts of the year nineteen hundred and eleven; but such attendance shall not be required of a child whose physical or mental condition is such as to render attendance inexpedient or impracticable, or who is being otherwise instructed in a manner approved in advance by the superintendent of schools or the school committee. The superintendent of schools, or teachers in so far as authorized by said superintendent or by the school committee, may excuse cases of necessary absence for other causes not exceeding seven day sessions or fourteen half-day sessions in any period of six months. For the purposes of this section, school committees shall approve a private school only when the instruction in all the studies required by law is in the English language, and when they are satisfied that such instruction equals in thoroughness and efficiency, and in the progress made therein, the instruction in the public schools in the same city or town; but they shall not refuse to approve a private school on account of the religious teaching therein."

Sec. 2 of this act as amended, provides that: "Every person having under his control a child as described in section one shall cause him to attend school as therein required, and, if he fails for seven day sessions or fourteen half-day sessions within any period of

perform the natural duty of education owed to their children.¹

§ 14. Excuses for Non-Attendance.

It has been held, however, that a child is excused from attending public school when he lives at such a distance from the schoolhouse that it is unreasonable for him to walk, unless a conveyance is provided by the school authorities,² or where the child is not of sufficient physical or mental condition to attend school,³ or where there is some other reasonable excuse for non-attendance. And under some statutes the compulsory education law is not operative where there is not sufficient seating capacity to seat children compelled to attend,⁴ or where the absences are only occasional and temporary.⁵

six months while such control obtains, to cause such child so to attend school, he shall, upon complaint by an attendance officer and conviction thereof, be punished by a fine of not more than twenty dollars, and no physical or mental condition which is capable of correction, or which renders the child a fit subject for special instruction at public charge in institutions other than public day schools, shall avail as defence under the provisions of this or the preceding section, unless it shall be made to appear that the defendant has employed all reasonable measures for the correction of the condition and the suitable instruction of the child.

Whoever induces or attempts to induce a child to absent himself unlawfully from school, or employs or harbors a child while school is in session, shall be punished by a fine of not less than ten nor more than fifty dollars."

¹ *State v. Bailey*, 157 Ind. 324, 61 N. E. 730; *State v. Jackson*, 71 N. H. 552, 53 Atl. 1021.

² *State v. Hall*, 74 N. H. 61, 64 Atl. 1102.

³ *State v. Jackson*, 71 N. H. 552, 53 Atl. 1021; *People v. Hendrickson*, 125 N. Y. App. Div. 256, 109 N. Y. S. 403; *State v. McCaffery*, 69 Vt. 85, 37 Atl. 234.

⁴ *Quigley v. State*, 5 Ohio Cir. Ct. 638.

⁵ *State v. Jackson*, 71 N. H. 552, 53 Atl. 1021.

Such compulsory education statutes are penal ones, and as such must be strictly construed.¹ Consequently where the statute requires all principals or other persons in charge of schools to refuse admission of any child to the schools under their charge or supervision except upon a certificate signed by a physician setting forth that such child has been successfully vaccinated, or that it has previously had small-pox, the only effect of the law is to deprive the child of public school privileges unless the law in this respect has been complied with. It is a matter of choice by the parent or guardian to comply or not with the law as to vaccination as he may choose. And if he chooses not to have the child vaccinated, and by reason thereof the child sent to school in good faith is excluded therefrom, the parent is not amenable to the compulsory attendance law. Such vaccination law does not make vaccination compulsory but leaves it optional with the parent. The compulsory attendance law is a penal one and must be strictly construed; the parent in sending the child to school complied with that law.² But it has been held that the parent under such conditions must provide competent educational facilities for his child elsewhere to avoid the consequences of the compulsory attendance law,³ and that private instruction at home is not sufficient.⁴

¹ *Com. v. Smith*, 24 Pa. Co. Ct. 129.

² *Com. v. Smith*, 24 Pa. Co. Ct. 129; *O'Bannon v. Cole*, 220 Mo. 697, 119 S. W. 424; *State v. Turney*, 31 Ohio Cir. Ct. 222.

³ *People v. Ekerold*, 211 N. Y. 386, 105 N. E. 670.

⁴ *State v. Connort*, 69 Wash. 361, 124 Pac. 910. *Contra*: *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550.

An offender against the compulsory education law must be tried within the bounds of the school district where the offense occurred,¹ and before a proper court or officers having jurisdiction of the offense,² and upon proper complaint.³ And the defendant will not be permitted to have a jury trial upon the reasonableness of his excuse for keeping a child out of school where the statute has made the school board the sole judge of the sufficiency of such excuses, and the defendant has neglected to appear and present such excuses to the school board when notified to do so.⁴

¹ *Grahn v. State*, 6 Ohio N. P. 182.

² *Quigley v. State*, 5 Ohio Cir. Ct. 638.

³ *State v. McCaffery*, 69 Vt. 85, 37 Atl. 234.

⁴ *Com. v. Hammer*, 9 Pa. Dist. 251.

CHAPTER II

OF SCHOOL DISTRICTS

§ 15. Status of School Districts.

School districts are not bodies politic, nor have they the general powers of corporations but may be considered as *quasi* corporations.¹ And the law respecting corporations does not generally apply to these aggregate bodies, which are usually created by statute, although a school district is sometimes held to be a municipal corporation within the contemplation of certain constitutional or statutory provisions.²

¹ First Nat'l Bk. *v.* Whisenhunt, 94 Ark. 583, 127 S. W. 968; A. H. Andrews Co. *v.* Delight, &c., 95 Ark. 26, 128 S. W. 361; Hassett *v.* Carroll, 85 Conn. 23, 81 Atl. 1013; People *v.* Board, &c., 255 Ill. 568, 99 N. E. 659; State *v.* Gordon, 231 Mo. 547, 133 S. W. 44; Dillon on Munic. Corp., 5th ed., § 34.

² State *v.* Wilson, 65 Kan. 237, 69 Pac. 172; State *v.* Grimes, 7 Wash. 270, 34 Pac. 836; Bush *v.* Shipman, 5 Ill. 186; State *v.* Powers, 38 Ohio St. 54; People *v.* Dupuyt, 71 Ill. 651; Wharton *v.* School Directors, 42 Pa. 358; Littlewort *v.* Davis, 50 Miss. 403; Stroud *v.* Stevens Point, 37 Wis. 367; Johnson *v.* Dole, 4 N. H. 478; Connor *v.* Board, &c., 10 Minn. 439. But see Bassett *v.* Fish, 75 N. Y. 303; Maxon *v.* School, &c., 5 Wash. 142, 32 Pac. 110. School districts are *quasi* corporations in Arkansas (by statute), Kansas, Minnesota, New Hampshire, New Jersey (but is a municipality as to mechanics' liens), New York (except for certain constitutional provisions), and Pennsylvania. They are municipal corporations in Illinois, Indiana, Iowa (as to issuing bonds, but not as to receiving liquor taxes), Kentucky (as to incurring excessive debt), Michigan (as to exemption in negligence cases). Dillon on Munic. Corp., 5th ed., § 36.

School districts as *quasi* corporations do not rank high in the attributes of corporate existence. They are purely auxiliaries of the State, and owe their creation to general statutes which confer upon them all the powers they possess, prescribe all the duties they owe, and impose all liabilities to which they are subject. They do not act under charters as do municipal corporations,¹ and are of the most limited powers known to the law,² having only such powers as are given to them by the statutes under which they are created,³ together with the implied powers necessary to execute the express powers.⁴ They are formed for the single purpose of maintaining public schools, and their corporate power and scope extends only to such matters as are necessary to enable them properly to answer that end.⁵ Being corporations they can act only in their corporate capacity, and bind themselves only by acts authorized by legal votes adopted at a regularly called district meeting.⁶

Although school districts do not have all the common law powers and duties of corporations, they have limited powers coextensive with the duties imposed upon them by statute or usage. And in this light they have sufficient corporate powers to maintain an

¹ *Heller v. Stremmel*, 52 Mo. 309; *Schultes v. Eberly*, 82 Ala. 242, 2 So. 345; *Shipley v. Hacheney*, 34 Oreg. 302, 55 Pac. 971; *Dillon on Munic. Corp.*, 5th ed., § 36.

² *Pasadena School District v. City of Pasadena*, 166 Cal. 7, 134 Pac. 985.

³ *Mulligan v. School District, &c.*, 241 Pa. St. 204, 88 Atl. 362.

⁴ *Royse, &c., v. Reinhardt*, 159 S. W. (Tex.) 1010.

⁵ *Harrington v. School District, &c.*, 30 Vt. 155.

⁶ *Stoughton v. Atherton*, 12 Metc. (Mass.) 105.

action on a contract to build a schoolhouse and lease land,¹ or to employ counsel to defend an action brought against the district.²

The legislature sometimes provides that a municipal and school corporation shall exist in the same territory. In such cases the two corporations are distinct, and the school corporation may be bound for labor and materials furnished in the building of a schoolhouse for such corporation.³

Although, by statute, a school district is usually entirely distinct from a municipality having the same limits and boundaries,⁴ it may, by the express terms of the statute, be made a part of the municipal government.⁵ If not so made, the municipality can make no valid contract pertaining to the property of the school district.⁶

In Connecticut such districts are not corporations separate from the town or city, nor independent corporations themselves for all purposes of common school education, but are subject to the ordinances of towns within the limits of which they exist,

¹ Rumford District *v.* Wood, 13 Mass. 192.

² Gould *v.* Board, &c., 34 Hun (N. Y.) 16.

³ Princeton *v.* Gebhart, 61 Ind. 187; Public Instruction Com'rs *v.* Fell, 52 N. J. Eq. 689, 29 Atl. 816; Dillon on Munic. Corp., 5th ed., § 36.

⁴ State *v.* Ogan, 159 Ind. 119, 63 N. E. 227; Knowles *v.* Board, &c., 33 Kan. 692, 7 Pac. 561; Heller *v.* Stremmel, 52 Mo. 309; Water Supply Co. *v.* Albuquerque City, 9 N. M. 441, 54 Pac. 969; Heizer *v.* Yohn, 37 Ind. 415; San Diego *v.* Daner, 97 Cal. 442, 32 Pac. 561; Board, &c., *v.* Detroit, 30 Mich. 505.

⁵ Stroud *v.* Stevens Point, 37 Wis. 367.

⁶ Jarvis *v.* Shelby, &c., 62 Ind. 257.

and may be formed, altered or dissolved by such towns.¹

The system of the free public schools is a matter of general State concern, rather than a mere municipal affair,² and the establishment and regulation of public schools rests primarily in the legislature.³ In ascertaining the will of the legislature all statutes of the State relating to public schools must be construed together.⁴

In some States the local management of the public schools of the larger cities has been placed in a board of education while the smaller villages are managed under a democratic form by an elected school committee.⁵ And in the larger cities where the division is by wards, the schools of such wards are district schools.⁶

§ 16. Districts De Facto.

Where school districts have exercised and continue to exercise governmental functions under color of law and legal right on the theory that they have been regularly formed, they are districts *de facto* and their legal existence cannot be questioned in collateral proceedings,⁷ but may be attacked only in a proceeding brought in the name of, or under authority of the

¹ Hassett v. Carroll, 85 Conn. 23, 81 Atl. 1013.

² Board, &c., v. State, 26 Okla. 366, 109 Pac. 563.

³ Stone v. Fritts, 169 Ind. 361, 82 N. E. 792.

⁴ Good v. Howard, 174 Ind. 358, 92 N. E. 115.

⁵ Gaddis v. School District, 92 Neb. 701, 139 N. W. 280.

⁶ Maxey v. Oshkosh, 144 Wis. 238, 128 N. W. 899.

⁷ School District, &c., v. Young, 163 Mo. App. 526, 143 S. W. 1197; Wood v. Calveras County, 164 Cal. 398, 129 Pac. 283.

State, by one having a special interest affected by its existence,¹ on an information in the nature of *quo warranto*.²

A school district *de facto* has a sufficient legal existence to enable it to collect,³ and retain tax moneys collected by it,⁴ maintain an action of trespass for breaking into a schoolhouse,⁵ issue bonds,⁶ and take property for taxes,⁷ without alleging or proving its existence *de jure*.

The statutes of many States provide that every school district shall be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for a term of one year,⁸ and such statutes are conclusive only against irregularities and informalities which are technical in their character, and which do not go to the merits of the case, but they do not raise a legal presumption of legal organization which is conclusive against fraud.⁹ The presumption established under such statute does not merely shift the burden of proof to the party impeach-

¹ *Wilson v. Brown*, 145 S. W. (Tex.) 639; *State v. Ryan*, 41 Utah 327, 125 Pac. 666; *School District, &c., v. Young*, 152 Mo. App. 304, 133 S. W. 143.

² *Black v. Early*, 208 Mo. 281, 106 S. W. 1014.

³ *Trumbo v. People*, 75 Ill. 561.

⁴ *Hamilton v. San Diego County*, 108 Cal. 273, 41 Pac. 305.

⁵ *Alderman v. School Directors*, 91 Ill. 179.

⁶ *School District, &c., v. State*, 29 Kan. 57.

⁷ *Stevens v. Newcomb*, 4 Denio (N. Y.) 437.

⁸ *State v. School District, &c.*, 54 Minn. 213, 55 N. W. 1122; *Call v. Chadbourne*, 46 Me. 206; *Collins v. School District*, 52 Me. 522; *State v. School District, &c.*, 42 Neb. 499, 60 N. W. 912.

⁹ *Call v. Chadbourne*, *supra cit.*

ing the incorporation, but is in the nature of a statute of limitation.¹

In absence of such statute the existence of a school district for a considerable length of time, creates a presumption of its legality,² but a short existence raises no such presumption.³

Reputation is sufficient to prove the existence and organization of a school district where there is no record.⁴ All that is necessary in such case is to show that there is a district long known and recognized as such.

§ 17. Formation and Organization of Districts.

The legislature, even without the consent of the inhabitants, has the primary authority to lay off territory into school districts,⁵ and this power may be delegated to a subordinate body or official.⁶ And the control of the legislature over the public school system is so plenary that in its discretion, a school district may comprise a part of a county, an entire county, or several counties or parts thereof, and may delegate

¹ *State v. School District, &c.*, 54 Minn. 213, 55 N. W. 1122.

² *Bowen v. King*, 34 Vt. 156; *Robie v. Sedgwick*, 4 Abb. Dec. (N. Y.) 73; *Rice v. McClelland*, 58 Mo. 116; *Bassett v. Porter*, 4 Cush. (Mass). 487.

³ *Thomas v. Gibson*, 11 Vt. 607.

⁴ *Barnes v. Barnes*, 6 Vt. 388.

⁵ *Schofield v. Watkins*, 22 Ill. 66; *School District, &c., v. Dean*, 17 Mich. 223; *Com. v. Gardner*, 23 Pa. St. 417; *School District v. Zediker*, 4 Okla. 599, 47 Pac. 482; *Kuhn v. Board &c.*, 4 W. Va. 499.

⁶ *Grove v. Board, &c.*, 20 Ill. 532; *Reynolds, &c., v. McCabe*, 72 Tex. 57, 12 S. W. 165; *Bay State Live Stock Co. v. Bing*, 51 Neb. 570, 71 N. W. 311.

to subordinate school officers the power of changing existing districts.¹

In some States a school district may be formed only by vote of the town, and a district otherwise formed does not possess corporate powers, nor can it authorize the assessment of taxes for any purpose.²

Independent school districts are against the policy of the law, and will not be erected where the effect is to separate the wealthier and poorer classes of a district to the detriment of the latter except in cases of extreme necessity.³

Statutory authority to divide or consolidate school districts implies power to create new districts out of established ones,⁴ and the act of establishing a school district is not consummated until entered on the public official record.⁵ After an organization a writ of *certiorari* will not issue to set aside the organization of a school district where it would be a palpable injustice.⁶

§ 18. Petitions for Establishment or Alteration of Districts.

School districts are sometimes formed at the request of the electors of the territory expressed in the form of a signed petition, and such signers of a petition for the organization of a school district have a right to

¹ Trustees, &c., v. Brooks, 163 Ky. 200, 173 S. W. 305.

² Tucker v. Wentworth, 35 Me. 393.

³ *In re* Mt. Pleasant, &c., 10 Pa. Co. Ct. 588.

⁴ Bourland v. Snyder, 224 Ill. 478, 79 N. E. 568.

⁵ Mouser v. Spaulding, 29 Ky. L. Rep. 1071, 96 S. W. 882.

⁶ School Board, &c., v. Board, &c., 146 Mich. 393, 109 N. W. 664.

withdraw their names therefrom before any action is taken on such petition.¹

A petition for the establishment of an independent school district, or for the alteration of established districts must set forth every fact made by statute indispensable to such establishment or alteration.² It should also state that the lands sought to be annexed are adjoining,³ and if natural or other adequate obstacles demand a redistricting, such obstacles should be stated in the petition.⁴

Where upon a petition in matters of redistricting the statute requires the signatures of a majority of the inhabitants, it must be a majority in each district to be affected by the proposed change, and a majority of the inhabitants of the collective districts is not sufficient.⁵

§ 19. Boundaries of Districts.

The legislature has power to create, or change the boundaries of a school district without the consent of the persons who reside in the territory affected.⁶

The boundaries of a school district can be on geographical lines only, and may not be on personal limita-

¹ *People v. Strawn*, 265 Ill. 292, 106 N. E. 840; *School District, &c., v. School District, &c.*, 63 Ark. 543, 39 S. W. 850. See also, § 19, *infra*.

² *In re Mt. Pleasant, &c.*, 10 Pa. Co. Ct. 588.

³ *In re Heidler*, 122 Pa. St. 653, 16 Atl. 97.

⁴ *In re Hatfield, &c.*, 2 Walk. (Pa.) 169; *In re Franklin, &c.*, 1 Pa. Com. Pl. 128.

⁵ *Sayre v. Tompkins*, 23 Mo. 443; *Allen v. Bertram*, 70 Iowa 434, 30 N. W. 684. But see, *People v. Allen*, 155 Ill. 402, 40 N. E. 350; *Hudspeth v. Wallis*, 54 Ark. 134, 15 S. W. 184.

⁶ *Norton v. Lakeside, &c.*, 97 Ark. 71, 133 S. W. 184.

tion.¹ Not only must the division be a geographical one, but it must include all the inhabitants of the town.² But it is not necessary that the geographical lines be continuous;³ and it has been held that where a district is laid out by such lines, and then certain individuals, with their polls and estates, are added thereto, this operates as a permanent annexation of those individuals and their real estates to the district, and does not violate the rule which requires districts to be established by geographical limits.⁴ If the town vote to set off a person by giving his name but without so setting off his estate as well, such vote is invalid.⁵

As a *quasi* corporation a school district is separate, and a distinct legal entity from a town of the same geographical limits,⁶ as also is a city school district distinct from the city.⁷ And the making of a city officer an *ex officio* officer of a school corporation having the same geographical limits as the city does not merge the distinct corporations.⁸

Extending or changing the limits of a city or town does not of itself enlarge a school district which corre-

¹ *Withington v. Eveleth*, 7 Pick. (Mass.) 106; *School District, &c., v. Aldrich*, 13 N. H. 139; *Pierce v. Carpenter*, 10 Vt. 480.

² *Perry v. Dover*, 12 Pick. (Mass.) 206; *Fry v. Athol*, 4 Cush. (Mass.) 250; *In re Wilkins, &c.*, 70 Pa. St. 108.

³ *Weeks v. Batchelder*, 41 Vt. 317.

⁴ *Alden v. Rounseville*, 7 Metc. (Mass.) 218.

⁵ *Nye v. Marion*, 7 Gray (Mass.) 244; *Gray v. Sheldon*, 8 Vt. 402.

⁶ *North Troy, &c., v. Troy*, 80 Vt. 16, 66 Atl. 1033; *Teeple v. State*, 171 Ind. 268, 86 N. E. 49.

⁷ *Wood v. Calveras County*, 164 Cal. 398, 129 Pac. 283; *State v. Henderson*, 145 Mo. 329, 46 S. W. 1076.

⁸ *Kuhn v. Thompson*, 168 Mich. 511, 134 N. W. 722.

sponded geographically with the former limits of the city or town.¹ Such corresponding extension of the school district could be authorized only by legislative act.²

When a petition to change school boundaries is pending in a county court, a signer thereof upon showing that he signed it under a mistake of fact, produced by misrepresentations, should be allowed upon application, to remove his name from such petition.³

The mere act, by a town, of putting up and establishing bounds of existing school districts is not a districting anew.⁴ And a board of school directors have no power to bind themselves and their successors by contract that the boundaries of a school district shall not be changed.⁵

§ 20. Alteration and Abolition of Districts.

The legislative power over school districts is plenary, subject to any constitutional limitations that may exist, and in the exercise of such power, the legislature may divide, change or abolish them at pleasure. And as a part of that power it may make provision for the division of the property and the apportionment of the debts of the old corporation, when a portion of its territory and public property

¹ *State v. Henderson*, 145 Mo. 329, 46 S. W. 1076; *State v. Independent, &c.*, 46 Iowa 425.

² *State v. Mayview, &c.*, 65 Mo. 587.

³ *School District, &c., v. School District, &c.*, 63 Ark. 543, 39 S. W. 850. See also, *People v. Strawn*, 265 Ill. 292, 106 N. E. 840.

⁴ *Adams v. Crooks*, 7 Gray (Mass.) 411.

⁵ *Conley v. School Directors*, 32 Pa. St. 194.

are transferred to the jurisdiction of another corporation. But in the absence of such provision, the rule of the common law obtains, and that rule leaves the property where it is found, and the debt upon the original debtor.¹

School districts as *quasi* corporations, are under control of the legislature. They may be changed and divided at the legislative will, and property may be thus transferred from one organization to another.² The legislature may alter the boundaries of an existing school district without consulting the inhabitants,³ and the power of alteration of a school district may be delegated to a subordinate body.⁴

Where the nature of a statute is such as to establish a new system for the government of public schools, and purports to be complete in itself, and is different from that which previously existed, the pre-existing law on the subject is repealed and the new statute entirely governs the public school system. If in such superseding law no provision for the alteration of established school districts is made, then no power exists for such alteration.⁵

In most of the States the division or changing of the limits of a district can be done only with the consent of a majority of the legal voters of the districts to be

¹ Pass, &c., v. Hollywood, &c., 156 Cal. 416, 105 Pac. 122.

² Connor v. Board, &c., 10 Minn. 439.

³ Parker v. Titcomb, 82 Me. 180, 19 Atl. 162; McCormac v. Robeson County, 90 N. C. 441; Raybould v. Hardy, 7 Utah 368, 26 Pac. 982.

⁴ School District, &c., v. Zediker, 4 Okla. 599, 47 Pac. 482.

⁵ Rodemer v. Mitchell, 90 Tenn. 65, 15 S. W. 1067.

affected by the change or the territory to be converted into the new district,¹ and in some States it is necessary that a petition be presented by a designated number of voters of the districts to be affected.² Many jurisdictions have statutes requiring that notice be given of the time and place of the meeting at which a proposed alteration is to be made.³

In their discretion and under statutory authority a school board may order a temporary consolidation of schools in a district, and when the exercise of such discretion is reasonable the courts will not interfere.⁴ And if the statute provides that where streams of water make it impracticable for children to attend school in their own district, the County Superintendent shall have authority, and it shall be his duty, when requested by the parents of such children, to attach to adjoining districts such territory as he may deem

¹ *People v. Keechler*, 194 Ill. 235, 62 N. E. 525; *Burnett v. School Inspectors*, 97 Mich. 103, 56 N. W. 234; *State v. Grimshaw*, 1 S. W. (Mo.) 363; *State v. Compton*, 28 Neb. 485, 44 N. W. 660; *State v. Deshler*, 25 N. J. L. 177; *Whitmire v. State*, 47 S. W. (Tex.) 293.

² *School District, &c., v. School District, &c.*, 63 Ark. 543, 39 S. W. 850; *Dartmouth Savings Bank v. School District, &c.*, 6 Dak. 332; *People v. Keechler*, 194 Ill. 235, 62 N. E. 525; *Henricks v. State*, 151 Ind. 454, 50 N. E. 559, 51 N. E. 933; *Perrizo v. Kesler*, 93 Mich. 280, 53 N. W. 391; *State v. School District*, 42 Minn. 357, 44 N. W. 120; *State v. Hill*, 152 Mo. 234, 53 S. W. 1062; *School District, &c., v. School District &c.*, 55 Neb. 716, 76 N. W. 420; *State v. Gang*, 10 N. D. 331, 87 N. W. 5; *State v. Wright*, 17 Ohio St. 32; *School District, &c., v. Lincoln County*, 9 S. D. 291, 68 N. W. 746.

³ *Howard v. Forester*, 109 Ky. 336, 59 S. W. 10; *Butterfield v. School District, &c.*, 61 Me. 583; *State v. Browning*, 28 N. J. L. 556; *People v. Hooper*, 13 Hun (N. Y.) 639; *State v. Clifton*, 113 Wis. 107, 88 N. W. 1019.

⁴ *Heard v. School Directors*, 45 Pa. St. 93.

necessary for the purpose of giving said children school privileges, the County Superintendent has authority to make such temporary alteration of districts as will accomplish its purpose, and his decision may not be collaterally attacked.¹ But such authority does not authorize a change in boundaries of districts without notice.² Where the officials making the alteration acted within their jurisdiction, the remedy by which the legality of an alteration of a school district may be tested is on information in the nature of *quo warranto* against the proper officers; and the legality cannot be questioned in a collateral proceeding.³

If the territory of a school district is changed, the original organization will retain all of its property unless some statutory provision is made to the contrary,⁴ and no apportionment of funds may be made in the absence of a statute providing for such apportionment.⁵

Upon organizing new districts out of an old one in

¹ *State v. Palmer*, 18 Neb. 644, 26 N. W. 469.

² *School District, &c., v. Coleman*, 39 Neb. 391, 58 N. W. 146.

³ *School Directors v. School Directors*, 135 Ill. 464, 28 N. E. 49; *State v. Palmer*, 18 Neb. 644, 26 N. W. 469; *School District, &c., v. Gibbs*, 52 Kan. 564, 35 Pac. 222; *Roeser v. Gartland*, 75 Mich. 143, 42 N. W. 687.

School District, &c., v. School District, &c., 55 Neb. 716, 76 N. W. 420.

⁴ *Winona v. School District, &c.*, 40 Minn. 13, 41 N. W. 539; *Briggs v. School District, &c.*, 21 Wis. 348.

⁵ *Cooke v. School District, &c.*, 12 Colo. 453, 21 Pac. 496; *State v. School District, &c.*, 90 Mo. 395, 2 S. W. 420; *Morrow County v. Hendryx*, 14 Ore. 397, 12 Pac. 806; *Joint School District, &c., v. School District, &c.*, 92 Wis. 608, 66 N. W. 794. But see, *Towle v. Brown*, 110 Ind. 599, 10 N. E. 628.

the absence of statutory provisions to the contrary, a new district takes the property which happens to fall within its limits,¹ and new districts also assume the liability of the old districts.² Statutes providing for a transfer of liabilities to a new school district have been held constitutional.³

Where the statute authorizes the combining of several school districts for their common good, and provides that the several school committees shall combine into one joint committee which shall be the agents for each of the towns entering into the alliance, the power of employing and dismissing a teacher rests with the joint committee, and the non-concurrence of a part of the joint committee which stands as the school committee of one of the towns, will not relieve that town from liability for the lawful acts of the joint committee.⁴

When a schoolhouse is erected by a district, the legal title vests in the district. But the district may be considered as holding the property in trust for the town or its inhabitants. And when the town abolishes one district and creates another, the property immediately vests in the new district, as property holden in

¹ *School District, &c., v. Tapley*, 1 Allen (Mass.) 49; *Whitmore v. Hogan*, 22 Me. 564; *Board, &c., v. Board, &c.*, 30 W. Va. 424, 4 S. E. 640; *Goulding v. Peabody*, 170 Mass. 483, 49 N. E. 752; *Barre v. School District, &c.*, 69 Vt. 374, 37 Atl. 1111.

² *Brewer v. Palmer*, 13 Mich. 104; *School District, &c., v. Greenfield*, 64 N. H. 84, 6 Atl. 484; *McCully v. Board, &c.*, 63 N. J. L. 18, 42 Atl. 776.

³ *Perrizo v. Kesler*, 93 Mich. 280, 53 N. W. 391; *Rawson v. Spencer*, 113 Mass. 40.

⁴ *Freeman v. Bourne*, 170 Mass. 289, 49 N. E. 435.

trust passes from one trustee to another, when one dies, resigns, or is removed, and another is appointed in his stead. If any time elapsed between the abolition of one district and the establishment of another, the legal title of the property might be said to vest in the *cestui que trust* or to lie in abeyance. But such a case can hardly be supposed to exist, for the formation of the new districts is the annihilation of the old ones. The same act of the town accomplishes both objects simultaneously. Whenever therefore a town forms new districts, by abolishing the old ones, the legal title to the existing schoolhouse vests in those of the new districts within whose territory they happen to fall.¹

Upon a separation of the district in which a school officer resides, so that his place of residence is no longer in the district which he theretofore represented, his office becomes immediately vacant and may be filled by appointment.² And where two districts are united into one, and the name of one of the districts thus consolidated is given to the consolidated district, such district is a new one.³

§ 21. Powers and Management of Districts.

A school district usually has the power to purchase, hire, or build schoolhouses, and to determine the amount of money necessary to be used for that purpose, as well as the power to raise the necessary funds,⁴

¹ Stoneham District *v.* Richardson, 23 Pick. (Mass.) 62.

² School District *v.* Wolf, 78 Kan. 805, 98 Pac. 237.

³ Barnes *v.* Ovitt, 47 Vt. 316.

⁴ Gilman *v.* Bassett, 33 Conn. 298; George *v.* Second School District, 6 Metc. (Mass.) 497; Peters *v.* Warren Township, 98 Mich.

and for the purpose of providing funds for building purposes a school district has the power to issue bonds.¹ In some States, however, bonds cannot be issued, but the funds may be raised by taxation,² and, if the electors of the district fail to act, the board of directors has the power to determine the amount to be raised.³

A school district can exercise no powers other than those conferred by statute, or necessarily implied in connection therewith,⁴ although school districts are usually empowered to make contracts in relation to school matters,⁵ such powers being always subject to the constitutional and statutory limitations.⁶ They are also usually vested with the power of holding property for school purposes.⁷

Where it is necessary to hire a house or special room for school purposes, the school officers have the power

54, 56 N. W. 1051; *Blake v. Sturtevant*, 12 N. H. 567; *Benjamin v. Hull*, 17 Wend. (N. Y.) 437; *Greenbanks v. Boutwell*, 43 Vt. 207.

¹ *Vaughan v. School District, &c.*, 27 Ore. 57, 39 Pac. 393; *Folsom v. School Directors*, 91 Ill. 402.

² *Richardson v. McReynolds*, 114 Mo. 641, 21 S. W. 901.

³ *Stevenson v. District Township*, 35 Iowa 462; *Gilman v. Bassett*, 33 Conn. 298; *Blake v. Sturtevant*, 12 N. H. 567.

⁴ *School District, &c., v. Bailey*, 12 Me. 254; *Third School District v. Atherton*, 12 Metc. (Mass.) 105; *Bank v. Brainerd, &c.*, 49 Minn. 106, 51 N. W. 814; *Buchanan v. School District*, 25 Mo. App. 85; *Farnum's Petition*, 51 N. H. 376; *Gould v. Board, &c.*, 34 Hun (N. Y.) 16; *State v. Bacon*, 31 S. C. 120, 9 S. E. 765; *Board, &c., v. Board, &c.*, 30 W. Va. 424, 4 S. E. 640.

⁵ *Baker v. Chamblès*, 4 Greene (Ia.) 428.

⁶ *Everett v. Independent School District*, 109 Fed. 697; *Campbell v. Indianapolis*, 155 Ind. 186, 57 N. E. 920; *Edmundson v. Independent School District*, 98 Iowa 639, 67 N. W. 671; *Wilson v. Board, &c.*, 12 S. D. 535, 81 N. W. 952.

⁷ *Carson v. State*, 27 Ind. 465; *Le Couteux v. Buffalo*, 33 N. Y. 335; *Locker v. Keiler*, 110 Iowa, 707, 80 N. W. 433.

to do so,¹ and, if the school directors fail to provide a suitable room or building for school purposes, *mandamus* will lie to compel them to do so.² In some States it is provided that the power of providing schoolhouses is vested in school officers instead of in the electors;³ but it is held that school boards or their agents have no power to exceed the amount of appropriations or a prescribed amount, and that, if they do so, the district will not be bound beyond the amount limited.⁴

By statute it is generally made the duty of the district board of directors, or some other officials, to take control of and manage the property used for school purposes in the district. Incidental to these duties they have the authority to bring suit for any injury to the school property.⁵ Another incident of the trustees is that they may invest a reasonable amount in insurance,⁶ and have the authority to contract for repairs.⁷

It has been held that school directors may not au-

¹ *Scripture v. Burns*, 59 Iowa 70, 12 N. W. 760; *Allen v. School District, &c.*, 15 Pick. (Mass.) 35; *Millard v. Board, &c.*, 19 Ill. App. 48.

² *School Directors v. People*, 186 Ill. 331, 57 N. E. 780.

³ *In re Walker*, 179 Pa. St. 24, 36 Atl. 148.

⁴ *Wilson v. School District, &c.*, 32 N. H. 118; *McGillivray v. Joint School District, &c.*, 112 Wis. 354, 88 N. W. 310.

⁵ *Alderman v. School Directors*, 91 Ill. 179; *School District, &c., v. Arnold*, 21 Wis. 657.

⁶ *Clark School Township v. Home Insurance Co.*, 20 Ind. App. 543, 51 N. E. 107.

⁷ *Knowles v. School District, &c.*, 63 Me. 261; *Giles v. School District, &c.*, 31 N. H. 304; *Van Dolsen v. Board, &c.*, 162 N. Y. 446, 56 N. E. 990.

thorize the use of school property for other than school purposes, such as religious meetings,¹ although statutes permitting directors to authorize the use of school property for religious purposes have been held constitutional.² It has also been held that there is no authority to use school property for political or social gatherings,³ or for public meetings to discuss matters of general interest. And not even a majority of the taxpayers of a district, against the objection of another taxpayer of the district, can authorize such use by formal vote or otherwise.⁴ But in Indiana it has been held that township trustees may use school property for any township purposes, including the holding of elections.⁵

In some States authority to select a site upon which to erect a school building is left to the voters of the particular district,⁶ while in other States certain officials specified by statute are given the power to make the selection.⁷

§ 22. District Meetings.

School district meetings are called in accordance with the provisions governing the procedure of warn-

¹ *Hysong v. Gallitzin, &c.*, 164 Pa. St. 629, 30 Atl. 482.

² *Nichols v. School Directors*, 93 Ill. 61.

³ *Spencer v. Joint School District, &c.*, 15 Kan. 259.

⁴ *Bender v. Streabich*, 182 Pa. St. 251, 37 Atl. 853; *Spencer v. Joint School District, &c.*, 15 Kan. 259.

⁵ *Harmony, &c., v. Osborne*, 9 Ind. 458.

⁶ *Leighton v. Ossipee, &c.*, 66 N. H. 548, 31 Atl. 899; *School Directors v. People*, 90 Ill. App. 670.

⁷ *Rodgers v. Independent School District*, 100 Iowa 317, 69 N. W. 544; *Roth v. Marshall*, 158 Pa. St. 272, 27 Atl. 945.

ing and calling usually provided by statute,¹ and the power to warn for meeting is distinct from the power to call.²

Where the clerk is empowered to call annual meetings of a school district, he cannot, by reason of this limitation upon his authority, call any meetings other than such annual meetings.³ If the statutes authorize a third person to call a meeting of a school district when the designated officers fail to act, such officer may also act when the designated officers have illegally called a meeting,⁴ and proceedings of a meeting illegally held may be ratified at a subsequent legal meeting.⁵ Where the statute provides for a meeting to be called upon application of a designated number of voters, the application must be strictly made in accordance with the statutes.

It is usually provided by statute that the officer calling the meeting shall give notice of the time, place and purpose of the meeting, and unless the statute be strictly followed the proceedings of the meeting will be invalid.⁶ Where the time and place of a meeting is designated by statute, it is not necessary to state

¹ *Fletcher v. Lincolnville*, 20 Me. 439; *Starbird v. School District*, 51 Me. 101; *Giles v. School District*, 31 N. H. 304; *State v. Lockett*, 54 Mo. App. 202; *Holland v. Davies*, 36 Ark. 446.

² *Stone v. School District*, 8 Cush. (Mass.) 592.

³ *Third School District v. Atherton*, 12 Metc. (Mass.) 105.

⁴ *Pickering v. De Rochemont*, 66 N. H. 377, 23 Atl. 88.

⁵ *Jordan v. School District, &c.*, 38 Me. 164.

⁶ *Bartlett v. Kinsley*, 15 Conn. 327; *Fletcher v. Lincolnville*, 20 Me. 439; *Perry v. Dover*, 12 Pick. (Mass.) 206; *Davis v. Rapp*, 43 N. J. L. 594; *Hunt v. School District, &c.*, 14 Vt. 300; *Chapin v. School District*, 30 N. H. 25.

it in the notice,¹ and a date on the notice is not essential.² If the statute requires that a notice of the meeting specify the object for which the meeting is called, no other matters not connected therewith may be lawfully acted upon.³ But the object of the meeting may be unnecessary in the notice of an annual meeting.⁴ And where a notice of the purposes for which a meeting is called is necessary it must be clearly expressed.⁵ The meeting should be opened within a reasonable time after the hour specified in the notice, and, where it is alleged that the meeting was not properly called, the one making the allegation has the burden of proving it.⁶

It is necessary that a meeting of the inhabitants of a school district should be opened within a reasonable time after the hour specified. What would be a reasonable time depends in some measure, upon the circumstances of each particular case. If the delay is for the mere purpose of enabling all the inhabitants to assemble, and without prejudice to any one, it would

¹ *Hodgkin v. Fry*, 33 Ark. 716; *State v. Edwards*, 151 Mo. 472, 52 S. W. 373.

² *Braley v. Dickinson*, 48 Vt. 599; *Jordan v. School District, &c.*, 38 Me. 164; *Rideout v. School District*, 1 Allen (Mass.) 232.

³ *Wright v. North School District*, 53 Conn. 576, 5 Atl. 708; *Lander v. School District*, 33 Me. 239; *Whitney v. Stowe*, 111 Mass. 368; *Holbrook v. Faulkner*, 55 N. H. 311; *School District, &c., v. Smith*, 67 Vt. 566, 32 Atl. 484.

⁴ *Seabury v. Howland*, 15 R. I. 446, 8 Atl. 341.

⁵ *Bartlett v. Kingsley*, 15 Conn. 327; *Reed v. Acton*, 117 Mass. 384; *Peters v. Warren, &c.*, 98 Mich. 54, 56 N. W. 1051; *People v. Board, &c.*, 48 Hun (N. Y.) 618, 1 N. Y. S. 593; *Weeks v. Batchelder*, 41 Vt. 317.

⁶ *South School District v. Blakeslee*, 13 Conn. 227.

be outrageously unjust to hold their proceedings illegal. But on the other hand if the delay were such as to create a general belief that no meeting would be holden, and thereby induce the greater body of the inhabitants to disperse, and a few were afterward to open the meeting and pass votes which could not have been passed except for the delay, it would be unjust to hold them legal and binding. Therefore it has been held that a delay of one hour and five minutes, not shown unreasonable, is of itself not sufficient to invalidate the proceedings of such meeting, although it was further shown that a few persons had gone away for the very purpose of preventing the meeting from acting.¹

A school district meeting should be characterized by fair play, frankness and liberality, and not savor too much of the factional caucus, to justify its judicial sanction. Where the electors of a school district met at three o'clock, organized forty minutes later, proceeded to vote, and thirty minutes after organizing, adjourned, the president declared the polls closed. Then twenty minutes thereafter while all the people composing the meeting were present in the voting place, with the president in the chair and the secretary in his place, two qualified electors appeared and tendered their votes which were refused on the ground that the polls had closed. The court held that these votes should have been received and counted.²

Where the statute provides that the annual school

¹ South School District *v.* Blakeslee, 13 Conn. 227.

² State *v.* Woolem, 39 Iowa 380.

meeting of each district shall be held on a certain date it is mandatory, and it must be held on that date ; otherwise any election of officers will be illegal.¹ But it is not necessary that officers be elected within the bounds of the district, if the meeting held outside of the district is otherwise unobjectionable.²

Where the notice of a special school meeting specifies the hour at which it will begin, and the meeting is opened promptly at the time specified, the business transacted therein will not be invalid because the meeting was adjourned within a half hour.³ And where parliamentary rules are not strictly followed in the adjournment of a school district meeting, the adjournment is not thereby invalidated where all electors present acquiesced.⁴

In the case of a meeting adjourned to a fixed time, any matters may be acted on that might have been legally acted on at the preceding meeting, providing no intervening rights of third parties have become vested in the meantime.⁵

§ 23. Warning or Notice of Meetings.

A notice, when required by statute, is generally held not binding unless given as the law directs or allows.⁶ And the notice, required by statute, of a

¹ *State v. Cones*, 15 Neb. 444, 19 N. W. 682; *Willard v. Pike*, 59 Vt. 202, 9 Atl. 907.

² *Myer v. Crispell*, 28 Barb. (N. Y.) 54.

³ *Regan v. School District, &c.*, 44 Wash. 523, 87 Pac. 828.

⁴ *Reeves v. Ryder*, 91 Kan. 639, 138 Pac. 592.

⁵ *Reed v. Acton*, 117 Mass. 384; *Maher v. State*, 32 Neb. 354, 49 N. W. 436, 441.

⁶ *Allen v. Strickland*, 100 N. C. 225, 6 S. E. 780.

school district election is essential to the validity of such election ;¹ although in New York, the statute requiring notice of school meetings is held to be directory only, and the want of notice unless wilfully or fraudulently omitted, does not render its meeting invalid, nor the proceedings void.²

It is usually provided by statute that when a new school district is to be formed, notice thereof is to be given the inhabitants of the district by posting, or by publication.³ In the issuance of such notice mere informalities are not jurisdictional defects, nor is the fact that the notice covers territory not actually taken.⁴ But misinformation as to the date, such as publishing the meeting for the 11th of August, while the meeting was actually held the 8th of August, makes the matter jurisdictional and the entire proceedings invalid.⁵ And the requirement of notice is jurisdictional, therefore if no notice be given, even though a consent be filed by a majority of the citizens of the district affected, the proceedings are invalid because the minority always have a right to be heard.⁶ The pub-

¹ *State v. Staley*, 90 Kan. 624, 135 Pac. 602.

² *Marchant v. Langworthy*, 6 Hill (N. Y.) 646; *Contra: Gentle v. School Inspectors*, 73 Mich. 40, 40 N. W. 928.

³ *Butterfield v. School District, &c.*, 61 Me. 583; *First School District v. Ufford*, 52 Conn. 44; *Gravel Hill School District v. Old Farm School District*, 55 Conn. 244, 10 Atl. 689; *Irvin v. Gregory*, 86 Ga. 605, 13 S. E. 120; *Fractional School District, &c., v. Metcalf*, 93 Mich. 497, 53 N. W. 627; *Perryman v. Bethune*, 89 Mo. 158, 1 S. W. 231; *State v. Graham*, 60 Wis. 395, 19 N. W. 359.

⁴ *Parman v. School Inspectors*, 49 Mich. 63, 12 N. W. 910.

⁵ *Coulter v. School Inspectors*, 59 Mich. 391, 26 N. W. 649.

⁶ *Gentle v. School Inspectors*, 73 Mich. 40, 40 N. W. 928.

lication or posting of the notice is also jurisdictional; ¹ but it has been held that appearance at a meeting called to act upon a petition for redistricting, is a waiver of notice and irregularity in the issuance of it. ²

Where a mode is provided for the calling of meetings, that mode must be strictly followed, and it is not sufficient to show that a meeting was in fact held and attended by all inhabitants who were qualified to attend. ³ And where different parties call and hold legal meetings, the first legally held has precedence. ⁴

Where the statute provides that if the official who primarily has the duty to call a meeting, neglects or refuses to do so, then some other specified officials have that duty, such neglect or refusal must exist and be shown to make valid the proceedings of a meeting called by the officials secondarily having that duty. ⁵

Authority to warn meetings does not include authority to call meetings; ⁶ and a meeting called to see if the district will prescribe the mode of calling all future meetings of the district, will not authorize the vote of the meeting on a mode of warning future meetings. ⁷ A statute providing that all warnings for school district meetings shall, before the same are posted, be

¹ *Graves v. Joint School Inspectors, &c.*, 102 Mich. 634, 61 N. W. 60; *State v. Compton*, 28 Neb. 485, 44 N. W. 660.

² *School District, &c., v. Carr*, 55 N. H. 452.

³ *Moore v. Newfield*, 4 Me. 44; *School District, &c., v. Lord*, 44 Me. 374.

⁴ *School District, &c., v. Lord*, 44 Me. 374.

⁵ *Starbird v. School District, &c.*, 51 Me. 101.

⁶ *Stone v. School District, &c.*, 8 Cush. (Mass.) 592.

⁷ *Rideout v. School District, &c.*, 1 Allen (Mass.) 232.

recorded by the town clerk of such school district, is merely directory, and a neglect upon the part of a clerk to comply with it does not vitiate the proceedings of the meeting if otherwise regular.¹

Where the statute requires that the time and place of a warned meeting shall be specified in the warning, if the time for holding the meeting is omitted in such warning the proceedings of such meeting are invalid.² And where the warning of a district meeting is required by the statute to state the business to be transacted, the omission thereof from the warning is not rendered valid by the fact that for nine years previously such omission had been made,³ inasmuch as the powers of a school district being wholly statutory they cannot be enlarged nor diminished by proof of usage,⁴ and abuses of power and violation of rights derive no sanction from time or usage.⁵

Where the time for holding annual meetings is fixed by statute, it is not necessary to state the time in the notice; the place of holding such meetings is sufficient.⁶ And such notice requires the signatures of only a majority of the directors;⁷ but a minority is not sufficient.⁸

¹ *Adams v. Sleeper*, 64 Vt. 544, 24 Atl. 990; *People v. Allen*, 6 Wend. (N. Y.) 487; *Torrey v. Millbury*, 21 Pick. (Mass.) 64; *Colt v. Eves*, 12 Conn. 253.

² *Sherwin v. Bugbee*, 16 Vt. 439.

³ *Scott v. School District, &c.*, 67 Vt. 150, 31 Atl. 145.

⁴ *Dillon on Munic. Corp.*, 5th ed., § 240.

⁵ *Hood v. Lynn*, 1 Allen (Mass.) 103.

⁶ *Hodgkin v. Fry*, 33 Ark. 716.

⁷ *Davies v. Holland*, 43 Ark. 425.

⁸ *State v. Lockett*, 54 Mo. App. 202.

Special meetings of school districts should have the object so expressed in the calling, warrant or notice that the inhabitants of the district may fairly understand the purpose for which they are convened.¹ And the mere omission of a punctuation mark will not invalidate a notice otherwise clear.² A vote on a matter of business not referred to in the notice of a special meeting is not valid,³ and a certified copy of such vote is inadmissible in evidence.⁴ A notice to meet for the purpose of obtaining information about an assessment of property in the district, will not include the appointment or employment of counsel.⁵

Where at an annual meeting the time and place of the next annual meeting is then fixed, it is not necessary to give notice of the time and place of such next meeting, and a meeting held at such time and place without notice will be valid.⁶

In computing the length of time during which notice of a meeting of a school district was given, the same rule will be applied as in the case of service of process, in that either the day on which the notice was posted or the day on which the meeting was held will be counted.⁷ When a special election is held in the same

¹ *South School District v. Blakeslee*, 13 Conn. 227; *Peters v. Warren Township*, 98 Mich. 54, 56 N. W. 1051; *Bartlett v. Kinsley*, 15 Conn. 327.

² *Merritt v. Farris*, 22 Ill. 303.

³ *Passage v. Board, &c.*, 19 Mich. 330; *Little v. Merrill*, 10 Pick. (Mass.) 543.

⁴ *Wilson v. Waltersville, &c.*, 44 Conn. 157.

⁵ *Wright v. North School District*, 53 Conn. 576, 5 Atl. 708.

⁶ *Marchant v. Langworthy*, 6 Hill (N. Y.) 646.

⁷ *Mason v. School District, &c.*, 20 Vt. 487.

schoolhouse of a district where the previous two special elections were held, the validity of such election is not impaired by the fact that the notice thereof did not specify the place at which it would be held.¹ And the return of an officer that he had warned the inhabitants of the town is sufficient without stating the manner in which he warned them.²

§ 24. Electors and Votes of District Meeting.

The electors of a school district are usually the taxpayers of either poll or estate taxes or both. And one who is merely a payer of poll tax is of equal standing with those who pay taxes on property. If the statute provides that women shall be eligible to vote on all school measures and questions, they are entitled to vote on the issue of bonds for school purposes.³

Unless otherwise provided by statute, the voting at a school district meeting may be by ballot,⁴ and a record of the proceedings of school district meetings must be kept by proper officers and in the form prescribed by statute.⁵ And even where a statute provides that a vote of a school district to acquire lands for school purposes shall be by ballot, such requirement is directory only, and a vote taken by showing of hands is legal.⁶

¹ *Younts v. Union County*, 151 N. C. 582, 66 S. E. 575.

² *Houghton v. Davenport*, 23 Pick. (Mass.) 435, overruling *Perry v. Dover*, 12 Pick. (Mass.) 206.

³ *Stuessy v. Louisville*, 156 Ky. 523, 161 S. W. 564; *Olive v. School District, &c.*, 86 Neb. 135, 125 N. W. 141.

⁴ *Chamberlain v. Board, &c.*, 57 N. J. L. 605, 31 Atl. 1033.

⁵ *Higgins v. Reed*, 8 Iowa 298.

⁶ *State v. Superior Court*, 69 Wash. 189, 124 Pac. 484.

If the vote of a school district be fairly taken upon proper notice, it is not invalid for the reason that only a minority of the school commissioners is present in compliance with a statute imposing upon them the duty of supervising the voting.¹

A required majority of voters of a school district means a majority vote of the qualified voters present and voting at a district meeting, and does not mean a majority of all qualified voters in the district.²

If a vote to levy a tax is decided adversely at a district meeting, a special meeting may be called to act thereon at which meeting favorable action may be legally taken.³ And a school district may at a legal meeting held before the assessment is called, rescind their vote to levy a tax passed at a previous meeting.⁴ But after a tax has been assessed and committed to the collector, and he has commenced the collection of it, the vote to levy may not be reconsidered.⁵ And an act requiring a two-thirds vote to pass it, cannot be rescinded by a bare majority.⁶

Where the statute provides that the school directors shall have the general charge and superintendence

¹ *Chiles v. Todd*, 43 Ky. 126.

² *Richardson v. McReynolds*, 114 Mo. 641, 21 S. W. 901; *Tucker v. McKay*, 131 Mo. App. 728, 111 S. W. 867; *Crandall v. Trustees, &c.*, 51 N. J. L. 138, 16 Atl. 194; *Sanford v. Prentice*, 28 Wis. 358. But see, *School District, &c., v. Oellien*, 209 Mo. 464, 108 S. W. 529.

³ *Trustees, &c., v. Lewis*, 35 N. J. L. 377; *Stackhouse v. Clark*, 52 N. J. L. 291, 19 Atl. 462.

⁴ *Pond v. Negus*, 3 Mass. 230.

⁵ *Mitchell v. Brown*, 18 N. H. 315; *Smith v. Dillingham*, 4 Barb. (N. Y.) 25.

⁶ *Stockdale v. Wayland, &c.*, 47 Mich. 226, 10 N. W. 349.

of all the public schools, they act as public officers entrusted with certain powers and are charged with corresponding duties. They are not merely agents of the town in which the school is located, and may disregard any vote of the inhabitants relating to their duties. So where school directors in good faith and in the exercise of good judgment, closed a school, there being other adequate schools for public instruction, a vote of the town to reopen the closed school may be disregarded by the school directors.¹

§ 25. Records and Minutes.

Where the statute makes it the duty of the secretary of the school district to keep all records of the proceedings of the board and district meetings in separate books, to be kept for that purpose, such requirements are not mandatory, but are merely directory. And although prudence would dictate that the records be so kept, the fact that the direction of the statute was not followed, but the records were kept on loose sheets, variant in size, will not make the proceedings void.²

Under a statutory requirement that the ayes and nays be recorded, it is not necessary to so record an unanimous vote, but it is sufficient to record the vote as unanimous.³ And where the statute requires the clerk of a school district to act as secretary of a school meeting, the will of the meeting cannot be frustrated

¹ *Morse v. Ashley*, 193 Mass. 294, 79 N. E. 481.

² *Higgins v. Reed*, 8 Iowa 298.

³ *Genessee, &c., v. McDonald*, 98 Pa. St. 444.

by the clerk's refusal to act as secretary, but a secretary *pro tem* may be appointed whose entries will be evidence of the proceedings of the meeting.¹

A clerk of a school district has a right to amend the minutes so that they will conform to the proceedings,² but he has not, after he is out of office and his successor occupies the office, the right to amend the records of the district,³ nor can the records be amended, on trial of a cause, so as to make them agree with the decision of a court.⁴

The original records of a school district are evidence of its proceedings,⁵ but where the original records have been lost the contents may be proved in accordance with the usual rules of evidence.⁶

§ 26. District Claims and Actions.

A school district, by statute made a corporation, may sue in any court of the State having competent jurisdiction.⁷ But school directors have no implied authority to prosecute or defend actions out of the school funds,⁸ and a vote of a district for its prudential committee to "look into the rights of the district"

¹ *State v. McKee*, 20 Oreg. 120, 25 Pac. 292.

² *Vaughn v. School District, &c.*, 27 Oreg. 57, 39 Pac. 393; *Harris v. School District, &c.*, 28 N. H. 58; *Hoag v. Durfey*, 1 Aik. (Vt.) 286.

³ *Third School District v. Atherton*, 12 Metc. (Mass.) 105.

⁴ *Hadley v. Chamberlin*, 11 Vt. 618.

⁵ *South School District v. Blakeslee*, 13 Conn. 227; *Williams v. School District*, 21 Pick. (Mass.) 75; *Richardson v. Sheldon*, 1 Pinn. (Wis.) 624.

⁶ *Higgins v. Reed*, 8 Iowa 298.

⁷ *Clarke v. School District*, 84 Ark. 516, 106 S. W. 677.

⁸ *Hotchkiss v. Plunkett*, 60 Conn. 230, 22 Atl. 535.

does not imply authority to prosecute an action.¹ Such authority, unless given by statute, can be given only by an affirmative vote of the electors of a district at a legally called meeting.

A school district at its annual meeting may by the lawful vote of its electors recognize and pay equitable claims, although they are not strictly legal demands.² And if the law makes a demand necessary, before bringing suit or taking other steps to collect the claim, it is not necessary where the school directors have voted not to pay a claim that has not yet been presented to them. No demand is then necessary before taking such other action as the law gives the claimant.³

Where a school board is made a body corporate, a suit to recover in favor of the corporation must be brought in its corporate name.⁴ Likewise a suit to recover a claim against the district must be brought against it in its corporate name, and not against the individuals comprising the board of trustees, although describing them as trustees.⁵

A civil and a school township are in some States distinct corporations even though represented by the same individual officers, and bounded by the same geographical lines, therefore in such States an action not showing against which township it is brought,

¹ Burgess v. School District, 100 Mass. 132.

² Stockdale v. Wayland, &c., 47 Mich. 226, 10 N. W. 349.

³ Horton v. Ocheyedon, 49 Iowa 231.

⁴ Stewart v. Thornton, 75 Va. 215; Kingsley v. Plum, &c., 2 Pa. St. 28.

⁵ Sproul v. Smith, 40 N. J. L. 314; See also, *Ex parte Collins*, 49 Ala. 69; Shoudy v. School Directors, 32 Ill. 290.

must be dismissed.¹ And where the civil and school townships are distinct, an action against the "trustee of the township" is conclusively presumed to be against the trustee of the civil township and not of the school township.²

Although an injunction generally lies to restrain public corporations from committing threatened acts in violation of law, and their duty, it has been held that an injunction in the name of the State, on the relation of the Attorney General will not lie to restrain the collection of taxes levied by a school district to pay void bonds theretofore issued. The reason upon which the decision was grounded being that the State, as such, had no interest in the subject matter, and that each taxpayer could protect himself, or all could unite, to prevent a multiplicity of suits, in a single bill to restrain the collection of the illegal tax.³

The statute of limitations may be relied on as a defense in an action against a school district,⁴ but a school district, by vote of its electors, may do acts which amount to a promise to pay, and thereby take a debt of the district out of the operation of the statute of limitations.

If there is within the borders of a town a free school of equal grade with a high school although not within the control of the committee on public schools, and

¹ *Jarvis v. Robertson*, 126 Ind. 281, 26 N. E. 182; *Utica v. Miller*, 62 Ind. 230.

² *Teeple v. State*, 171 Ind. 268, 86 N. E. 49.

³ *State v. McLaughlin*, 15 Kan. 228.

⁴ *Bank of Gallatin v. Baber*, 74 Tenn. 273.

not supported in any way by the town in which it is located, and was never approved by the State Board of Education, an inhabitant of that town cannot recover from the town the cost of tuition in the high school of another town.¹

Individual members of a school district made a body corporate, have no right to appear and be heard in defense of an action against the district;² but an execution against the inhabitants of a school district may, in some States, be levied on the property of an individual member of the district, and may be so levied, in the first instance, even if there be corporate property of the district, which can be taken and applied towards satisfaction of such execution.³ In this respect a school district is analogous to towns.⁴ But in Texas a judgment against a school district cannot be enforced by execution, *mandamus* being the proper remedy.⁵

The regularity and formation of a school district cannot be attacked in a collateral suit.⁶ And where a school district has been in continued existence for a

¹ *Hurlburt v. Boxford*, 171 Mass. 501, 50 N. E. 1043.

² *Lane v. Weymouth*, 10 Metc. (Mass.) 462.

³ *Gaskill v. Dudley*, 6 Metc. (Mass.) 546.

⁴ *McLoud v. Selby*, 10 Conn. 390; *Chase v. Merrimac Bank*, 19 Pick. (Mass.) 564. But see, *Kenyon v. Clark*, 2 R. I. 67.

⁵ *Crowell, &c., v. First Nat'l Bk.*, 163 S. W. (Tex.) 339.

⁶ *School District, &c., v. School District, &c.*, 45 Kan. 543, 26 Pac. 43; *State v. Donahay*, 30 N. J. L. 404; *Reynolds v. Moore*, 9 Wend. (N. Y.) 35; *Keweenaw Association v. School District, &c.*, 98 Mich. 437, 57 N. W. 404; *Burnham v. Rogers*, 167 Mo. 17, 66 S. W. 970; *State v. Central Pac. R. Co.*, 21 Nev. 75, 25 Pac. 296; *Hamilton v. San Diego County*, 108 Cal. 273, 41 Pac. 305; *Alderman v. School Directors*, 91 Ill. 179. But see, *Orrick, &c., v. Dorton*,

number of years with the acquiescence of the inhabitants therein the legality of its formation will be presumed without resort to record.¹

§ 27. District Torts.

A private action cannot be maintained against a town or other *quasi* corporation for a neglect of corporate duty, unless such action be given by statute.

This rule of law, however, is of limited application. It is applied, in case of towns, only to the neglect or omission of a town to perform those duties which are imposed on all towns, without their corporate assent, and exclusively for public purposes; and not to the neglect of those obligations which a town incurs, when a special duty is imposed on it, with its consent, express or implied, or a special authority is conferred on it, at its request. Consequently a town, which has assumed the duties of school districts, is not liable for an injury sustained by a scholar attending the public school, from a dangerous excavation in the schoolhouse yard, owing to the negligence of the town officers.²

A municipal corporation, in absence of an express statute, is liable for negligent injury to persons; but a *quasi* corporation being liable only when made so by statute, such corporate bodies as school districts,

125 Mo. 439, 28 S. W. 765; *Green Mountain, &c., v. Savage*, 15 Mont. 189, 38 Pac. 940; *Thomas v. Gibson*, 11 Vt. 607.

¹ *Stevens v. School District, &c.*, 30 Mich. 63; *Rice v. McClelland*, 58 Mo. 116; *Bowen v. King*, 34 Vt. 156; *Presque Isle County v. Thompson*, 61 Fed. 914.

² *Bigelow v. Randolph*, 14 Gray (Mass.) 541; *Sullivan v. Boston*, 126 Mass. 540.

boards of education and other *quasi* corporations, are not impliedly liable for the wrongful acts and negligence of its officers or agents in maintaining and repairing school buildings.¹

School boards are involuntary *quasi* corporations for the exercise of governmental functions, and in absence of an express statute imposing liability for negligence are not liable for acts of negligence.² And a school district is not liable for conversion by its directors,³ nor for negligence in providing an unsafe conveyance for use in the transportation of pupils.⁴

A school district organized as a *quasi* corporation, and solely for the public benefit, although capable of suing and being sued is not liable for the trespasses, negligence, and other torts committed by its officers unless made so by statute.⁵ They have no funds out of which to pay damages, nor have they the power to raise money by taxation or otherwise to apply to such

¹ Dillon on Munic. Corp., 5th ed., §§ 38, 1658; *Hill v. Boston*, 122 Mass. 344; *Kinnare v. Chicago*, 171 Ill. 332, 49 N. E. 536; *McNeil v. Boston*, 178 Mass. 326, 59 N. E. 810; *Ernst v. West Covington*, 116 Ky. 850, 76 S. W. 1089; *Bigelow v. Randolph*, 14 Gray (Mass.) 541; *Clark v. Nicholasville*, 27 Ky. L. Rep. 974, 87 S. W. 300; *Sullivan v. Boston*, 126 Mass. 540; *Howard v. Worcester*, 153 Mass. 426, 27 N. E. 11; *Wixon v. Newport*, 13 R. I. 454; *Folk v. Milwaukee*, 108 Wis. 359, 84 N. W. 420. But see, *Higbie v. New York, &c.*, 122 N. Y. App. Div. 483, 107 N. Y. S. 168.

² *Kinnare v. Chicago*, 171 Ill. 332, 49 N. E. 536; *Rock Island, &c., Co. v. Elliott*, 59 Kan. 42, 51 Pac. 494; *State v. Board, &c.*, 94 Md. 334, 51 Atl. 289; *Board, &c., v. Volk*, 72 Ohio St. 469, 74 N. E. 646.

³ *McClure v. Tipton*, 79 Mo. App. 80.

⁴ *Harris v. Salem*, 72 N. H. 424, 57 Atl. 332.

⁵ *School District, &c., v. Williams*, 38 Ark. 454; *Freel v. Crawfordsville*, 142 Ind. 27, 41 N. E. 312; *Ford v. Kendall, &c.*, 121 Pa. St. 543, 15 Atl. 812.

purposes. Their non-liability is the same as that of townships and counties.¹

A school district is not liable for the injury of a pupil by reason of the janitor throwing kerosene oil on a fire;² injury to a pupil by a falling column while repairs were being made;³ injury to a teacher from a defective floor,⁴ or other injuries caused by defective condition of premises,⁵ or by the negligence of employees.⁶ So where a school district was sued for an injury to a pupil caused by two small stumps on the playground which caught his foot and resulted in such injury that an amputation of the leg was necessary, the negligence in allowing the stumps to remain there was held to be that of public officers in relation to a public duty, and therefore the district was not liable.⁷ And the same conclusion was reached in a case where a school committee was sued for damages resulting to a party on a highway caused by the falling of a tree being cut down by proper persons employed to fell it on the school lot;⁸ also in a case where a pupil was

¹ *Freel v. Crawfordsville*, *supra cit.*; *Finch v. Toledo, &c.*, 36 Ohio St. 37; *Cones v. Benton, &c.*, 137 Ind. 404, 37 N. E. 272.

² *Ford v. Kendall, &c.*, 121 Pa. St. 543, 15 Atl. 812.

³ *Erie, &c., v. Fuess*, 98 Pa. St. 600.

⁴ *Bassett v. Fish*, 75 N. Y. 303.

⁵ *Bank v. Brainerd, &c.*, 49 Minn. 106, 51 N. W. 814; *Sullivan v. Boston*, 126 Mass. 540; *Lane v. Woodbury, &c.*, 58 Iowa 462, 12 N. W. 478; *Wixon v. Newport*, 13 R. I. 454; *Ham v. New York*, 70 N. Y. 459; *Katz v. Board, &c.*, 162 N. Y. App. Div. 132, 147 N. Y. S. 327.

⁶ *Howard v. Worcester*, 153 Mass. 426, 27 N. E. 11; *Donovan v. McAlpin*, 85 N. Y. 185; *Wood v. Independent, &c.*, 44 Iowa 27.

⁷ *Bank v. Brainerd, &c.*, 49 Minn. 106, 51 N. W. 814.

⁸ *McKenna v. Kimball*, 145 Mass. 555, 14 N. E. 789.

injured by falling into an open well on the playground.¹

But where the board of education selects one of its members as an agent charged with the separate and distinct duty of keeping a schoolhouse in repair, he is individually liable for an injury caused by his failure to do so.²

Where the statute provides that an action of tort may be maintained against a school district, such district is liable in an action for damages caused to a pupil by the overturning of a receptacle of boiling water negligently kept upon a register in the middle of the schoolroom, the injured pupil being rightfully in attendance at the school, even though the duty to use care be a governmental one.³ And school authorities are liable for maintaining a flag pole in an unsafe condition on a public school building.⁴

A school district may maintain an action for trespass to land dedicated for school purposes.⁵

¹ *Finch v. Toledo, &c.*, 36 Ohio St. 37.

² *Bassett v. Fish*, 75 N. Y. 303.

³ *Redfield v. School District, &c.*, 48 Wash. 85, 92 Pac. 770.

⁴ *McCarton v. City of New York*, 149 N. Y. App. Div. 516, 133 N. Y. S. 939.

⁵ *Morris v. School District*, 63 Ark. 149, 37 S. W. 569.

CHAPTER III

OF SCHOOL PROPERTY

§ 28. Power to Provide Land and Buildings.

A schoolhouse is a house appropriated for the use of a school or schools, or for instruction,¹ and the power to provide schoolhouses, as well as the power to determine the amount necessary to defray the expenses incident thereto, is primarily in the school district or the school trustees.² And any agents of a town, having power to make contracts for the erection of a schoolhouse, have power to ratify such a contract.³

When a district has power to erect a building for school purposes, it is usual to exercise the authority through the school directors or through a committee specially appointed for that purpose, and such committee when legally appointed to erect, purchase, or repair a schoolhouse are public officers, and the act of the majority is the act of the whole.⁴

If a contract for the erection of a schoolhouse, by reason of an informality, is voidable, the contract

¹ Webster's Dict.

² *Colt v. Roberts*, 28 Conn. 330; *Sheldon v. Central School District*, 25 Conn. 224; *School District, &c., v. Stough*, 4 Neb. 357.

³ *Stevenson v. District, &c.*, 35 Iowa 462.

⁴ *Keyser v. District, &c.*, 35 N. H. 477.

may be ratified, and the acceptance and use of the building by the district will operate as a ratification, and render the district liable to the contractor for the cost of the building.¹

If the owner of land desired for school purposes gives an unqualified refusal to sell the land at a reasonable price, the land may be taken by right of eminent domain without the consent of owner if damages are tendered to him.² But this power may not be exercised without notice to the owner of the land.³

If the district neglect or refuse to act in providing rooms for school purposes, the school committee are authorized to provide rooms and employ teachers at the expense of the district.⁴

Where the school directors provide schoolhouses that are comfortable and safe, although they are unsightly, cheap, unfit for permanent use, and hard to keep in repair, they are not removable for neglect of duty.⁵

If schoolhouses in sparsely populated districts are so located by the school directors that the longest distance required to be traveled by any scholars is slightly more than two miles, the exercise of their dis-

¹ *Keyser v. District, &c.*, 35 N. H. 477; *Fisher v. School District, &c.*, 4 Cush. (Mass.) 494; *Bellows v. District, &c.*, 70 Iowa 320, 30 N. W. 582; *Kimball v. School District, &c.*, 28 Vt. 8; *Sullivan v. School District, &c.*, 39 Kan. 347, 18 Pac. 287.

² *Cousens v. School District, &c.*, 67 Me. 280; *Storer v. Hobbs*, 52 Me. 154; *Gibbons v. Southwest School District*, 4 Allen (Mass.) 508; *True v. Melvin*, 43 N. H. 503.

³ *Eighth School District v. Copeland*, 2 Gray (Mass.) 414.

⁴ *Gilman v. Bassett*, 33 Conn. 298.

⁵ *In re Ohio Township School Directors*, 9 Pa. Co. Ct. 392.

cretion in so doing is not cause for their removal except on evidence showing want of good faith in their acts.¹

Where the school board takes official action as to the number of schoolhouses necessary for a district, but fail to provide a sufficient number of buildings for school purposes, they cannot be removed from office for neglect of duty, such matters being within their discretion.² Nor will the court remove school directors for neglect to build new schoolhouses, where the expense would be great, and the township is already deeply in debt.³ But a refusal to consider a request of citizens for enlarged school accommodations where they are clearly needed is a sufficient cause for removal.⁴

The school authorities in their discretion may exchange buildings between white and colored schools, and the effect on property values in the neighborhood cannot qualify their right to exercise their discretion.⁵ And where the statute authorizes the board of directors to obtain at the expense of the district such highways as may be necessary to secure access to a schoolhouse, the authority is not limited to those instances where there is no highway already existing from which access may be had.⁶

Authority to purchase a site and erect a schoolhouse thereon, may incidentally include the authority to pay a

¹ *Price v. Barrett, &c.*, 9 Pa. Co. Ct. 395.

² *Snively v. School Directors*, 1 Lanc. L. Rev. (Pa.) 9.

³ *In re Derry, &c.*, 2 Pear. (Pa.) 24.

⁴ *In re Connoquenessing, &c.*, 9 Pa. Co. Ct. 425.

⁵ *Roberts v. Louisville, &c.*, 16 Ky. L. Rep. 181, 26 S. W. 814.

⁶ *Bogaard v. Plain View*, 93 Iowa, 269, 61 N. W. 859.

broker's commission in the purchase of the site.¹ And it is within the powers of a school district to purchase land on which to construct a playground for the children of that district, even though such course includes the erecting of a gymnasium.²

§ 29. Acquiring Site.

School districts are usually empowered by statute to determine the location of their schoolhouses, and if the inhabitants cannot agree then some other specified body is to take the deciding action.³ But if the statute provides that a location must be designated by the inhabitants in a district meeting, the power of selection cannot be delegated.⁴ And in some States the initial power of selection is in a special body.⁵ The location of a schoolhouse being subject to the will of the majority, may be changed as often as desired in absence of a prohibiting statute.⁶

Where the location of a schoolhouse has been chosen, it will not be invalidated by failure of the town clerk to make due record of the matter,⁷ or in making a mistake in the recording thereof.⁸ And where a school district has no authority to acquire land and hold it

¹ Board, &c., *v.* Mapes, 14 N. Y. St. R. 593.

² Sorenson *v.* Christiansen, 72 Wash. 16, 129 Pac. 577.

³ Bean *v.* Prudential, &c., 38 Vt. 177.

⁴ Benjamin *v.* Hull, 17 Wend. (N. Y.) 437; Farmers, &c., *v.* School District, &c., 6 Dak. 255, 42 N. W. 767.

⁵ Hughes *v.* Board, &c., 13 Ohio 336; Carpenter *v.* Independent, &c., 95 Iowa 300, 63 N. W. 708.

⁶ True *v.* Melvin, 43 N. H. 503.

⁷ Converse *v.* Porter, 45 N. H. 385.

⁸ Merritt *v.* Farris, 22 Ill. 303.

for any purpose other than for a schoolhouse site, the school directors cannot bind the district to pay for land acquired for such other purposes. And if the school directors purchase land for such other purposes, and because of the reversal of their action by the County Superintendent the title never vests in the district it is not bound to tender a reconveyance in order to maintain an action to recover the price from the vendor. And the vendor of such land is charged with notice of the limitation of the authority conferred by the statute upon such directors.¹

Where a question of selecting a particular schoolhouse site is defeated at an election and no other site is selected, the question of selecting the same site may be considered at a new election.²

A public park is laid out for æsthetic considerations, and therefore there is no right unless given by statute to erect a schoolhouse thereon,³ although it has been held that such building may be erected on a public square.⁴

In matters affecting the public, the plaintiff must show by his petition that he will suffer some special damage not common to the public or he cannot maintain an application for a writ of injunction. Therefore an injunction to restrain a school board from removing a schoolhouse to another location will not be granted if no special damage to the plaintiff is alleged.⁵ But where

¹ *Independent, &c., v. McClure*, 136 Iowa 122, 113 N. W. 554.

² *Trustees, &c., v. Kuhn*, 261 Ill. 190, 103 N. E. 553.

³ *Rowzee v. Pierce*, 75 Miss. 846, 23 So. 307.

⁴ *Reid v. Edina, &c.*, 73 Mo. 295.

⁵ *Parody v. School District*, 15 Iowa 514, 19 N. W. 633.

the statute provides that a schoolhouse can be removed from that locality only upon an affirmative vote of the electors of the district, its removal will be enjoined without that vote.¹ And in an action to enjoin a school district from changing the site of a schoolhouse, the plaintiff must allege that he is a resident taxpayer and voter in the district.²

§ 30. Erecting Schoolhouses.

The trustees of a school district can bind the district by a contract to build a new schoolhouse, only when authorized to do so by a vote of the electors of the district.³ And the officers of a school district have no discretion as to building a schoolhouse, when the district electors, at a regular meeting, have voted to issue bonds and from the proceeds build a schoolhouse. Such vote is an instruction which must be obeyed.⁴ But the vote of the electors of a district at a meeting called without legal notice, that decides for the building of a schoolhouse, gives no authority to issue bonds or award contracts for that purpose.⁵

The performance of a contract by a board of directors to employ a member of the board as superintendent of the construction of a school building for a compensation may be enjoined by a taxpayer of the district without

¹ *Graves v. Jasper, &c.*, 2 S. D. 414, 50 N. W. 904.

² *Hess v. Dodge*, 82 Neb. 35, 116 N. W. 863. See also, *Tucker v. McKay*, 131 Mo. App. 728, 111 S. W. 867.

³ *School District, &c., v. Brown*, 2 Kan. App. 309, 43 Pac. 102.

⁴ *Schouweiler v. Allen*, 17 N. D. 510, 117 N. W. 866.

⁵ *Austin v. Board, &c.*, 68 Misc. Rep. 538, 125 N. Y. S. 222.

showing fraud, inasmuch as such contract is void, and any compensation paid therefor should be returned to the district.¹ But a building committee appointed by the district may appoint one of their number to superintend the erection of the building for a compensation, and in absence of fraud, such person may recover from the district in his own name the amount of his claim.²

In contracting with a committee selected to erect a schoolhouse, the party is bound to take notice of the amount which the committee were authorized to spend and of the price to be paid.³ But it has been held that where a building committee are appointed by a district to superintend the erection of a schoolhouse they are agents of the district, and the contractor in erecting the building has a right to rely upon the pointing out of the location by the committee, regardless of the recorded vote of the district specifying a different location of which they had no knowledge.⁴

A suit to restrain the carrying out of an illegal contract by the district board of education for the erection of a school building, may be maintained by a corporation which is a taxpayer.⁵

If a school board is authorized to construct a school building in the first instance, they may make a new

¹ *Weit v. Independent, &c.*, 78 Iowa 37, 42 N. W. 577; *Currie v. School District, &c.*, 35 Minn. 163, 27 N. W. 922.

² *Jenkins v. Doughty, &c.*, 39 Me. 220.

³ *Turney v. Bridgeport*, 55 Conn. 412, 12 Atl. 520.

⁴ *Baker v. School District, &c.*, 46 Vt. 189.

⁵ *Toole Bld'g. Ass'n v. Toole, &c.*, 42 Utah 596, 134 Pac. 558.

contract to finish a building where the first contractor has abandoned it and gone into bankruptcy, and the board of estimates should again sanction the expenditure.¹

A stipulation in a contract to erect a school building that the architect's decision shall be final binds both parties in the absence of fraud, gross mistake, or bad faith.²

In some cases *mandamus* and injunction are correlative remedies,³ but their general functions are distinct.⁴ Thus it has been held that injunction and not *mandamus* is the proper remedy to prevent the erecting, by the trustees, of a schoolhouse on a site selected in violation of law. But *mandamus* was held the proper remedy to compel the trustees to carry out the decision of the superior school officer in relation to establishing a schoolhouse for the district.⁵

In Georgia a municipal corporation, under its general powers, may build a schoolhouse, without express authority, unless its charter forbids.⁶

A schoolhouse is not liable to levy and sale on execution; nor if it burns down, can the insurance money, be garnished by a creditor.⁷

¹ Holden v. Board, &c., 85 N. J. L. 370, 91 Atl. 990.

² Hatfield v. Knight, 112 Ark. 83, 164 S. W. 1137; Berger M'fg. Co. v. Crites, 178 Mo. App. 218, 165 S. W. 1163.

³ Board, &c., v. McComb, 92 U. S. 531; 23 L. ed. 623.

⁴ Smith v. Bourbon County, 127 U. S. 105, 32 L. ed. 73, 8 S. Ct. 1043.

⁵ Dillon on Munic. Corp. 5th ed., § 1482 n.; State v. Custer, 11 Ind. 210.

⁶ Cartersville v. Baker, 73 Ga. 686.

⁷ Fleishel v. Hightower, 62 Ga. 324.

§ 31. Mechanics' Liens.

A mechanic's lien cannot lie against a building which has been erected by a city for school purposes,¹ unless it is expressly authorized by statute.²

Public policy forbids the extension of mechanics' liens to such public buildings as schoolhouses, and where a mechanic's lien is generally created by statute it cannot be enforced against public school property,³ inasmuch as public property is not subject to such lien except when expressly made so by statute.⁴ A statute providing for the creation and enforcement of a mechanic's lien on "any building" does not authorize a lien on a public school building.⁵

Where a statutory lien is given to all persons employed upon or furnishing materials toward the performance of any public work or "public improvement," a schoolhouse is a public improvement within the meaning of such statute.⁶ And where the statute provides that workmen and materialmen of a contractor for a public improvement shall have a lien on the money due the contractor from the municipality, such law applies

¹ *Staples v. Somerville*, 176 Mass. 237, 57 N. E. 380; *Lessard v. Revere*, 171 Mass. 294, 50 N. E. 533.

² *Western, &c., v. Board, &c.*, 39 Okla. 716, 136 Pac. 595; *Des Moines, &c., v. Plane*, 163 Iowa 18, 143 N. W. 866; *School District, &c., v. Graham*, — Okla., — 146 Pac. 213; *Aetna Indemnity Co. v. Comer*, 136 Ga. 24, 70 S. E. 676; *Plummer & Davis v. School District, &c.*, 92 Ark. 236, 118 S. W. 1011; *Morganton, &c., v. Morganton, &c.*, 150 N. C. 680, 64 S. E. 764.

³ *Minnetonka, &c., v. Board, &c.*, 41 Okla. 541, 139 Pac. 284.

⁴ *Barrett M'f'g Co. v. Board, &c.*, 133 La. 1022, 63 So. 505.

⁵ *National, &c., v. Huntington*, 81 Conn. 632, 71 Atl. 911.

⁶ *Spalding Lumber Co. v. Brown*, 171 Ill. 487, 49 N. E. 725.

to a school board which for this purpose is a municipality, and to a school building which is a public improvement.¹

§ 32. Contractors' Bonds.

The law regarding the rights and liabilities in respect to the bonds taken from contractors, and conditioned to complete a school building free from mechanics' liens, or free from indebtedness, is not uniform as viewed in the decisions of the various courts. Much seems to depend upon the wording of the bond. Thus in Texas it has been held that even without being authorized by statute, the school authorities may require a contractor to give a bond for the payment of all debts incurred, and a laborer or materialman may sue thereon in his own name.² While in the same State it has also been held that inasmuch as a materialman could not acquire a lien on a public building he is not entitled to sue on a bond given by a contractor conditioned to complete the building free from mechanics' liens. And a school district made a party to such suit has no right to be reimbursed for attorney's fees expended in defending such suit.³

If the statute requires that school trustees, before entering upon a contract for the erection of any school building, shall exact a bond conditioned for the payment by the contractor as shall become due, all indebtedness

¹ *Beardsley v. Brown*, 71 Ill. App. 199. But see, *Green Bay Lumber Co. v. Odebolt*, 125 Iowa 227, 101 N. W. 84.

² *N. O. Nelson Co. v. Stephenson*, — Tex. Civ. App., — 168 S. W. 61.

³ *Garrett v. McAdams, &c.*, — Tex. Civ. App., — 163 S. W. 320.

which may accrue to any person on account of labor or material furnished in the erection of such buildings, their functions are ministerial. But whether ministerial or judicial, their failure to take such bond makes them individually liable for damages to the materialman or laborer, individually, injured by such failure,¹ and neither notice nor demand is necessary to the cause of action.² Even if the statute does not require that such bond be taken, a trustee is not inhibited from exacting it.³ And if such bond be given and the materialman not duly paid, he has a right of action on the bond.⁴

But if a materialman or laborer, knowing that such required bond has not been given, undertakes to furnish material or labor relying upon the credit of the contractor who subsequently becomes insolvent, he is estopped to claim damages from the trustees for failure to exact the bond.⁵ And it has been held that where the statute requires public officers to take from a contractor for public improvements, a bond conditioned to pay all indebtedness for labor and materials,

¹ *Owen v. Hill*, 67 Mich. 43, 34 N. W. 649; *Wells v. Board, &c.*, 78 Mich. 260, 44 N. W. 267; *Wilcox Lumber Co. v. School District*, 106 Minn. 208, 118 N. W. 794. *Contra*: *Plumbing Supply Co. v. Board, &c.*, 32 S. D. 270, 142 N. W. 1131; *Blanchard v. Burns*, 110 Ark. 515, 162 S. W. 63.

² *Staffon v. Lyon*, 110 Mich. 260, 68 N. W. 151.

³ *Williams v. Markland*, 15 Ind. App. 669, 44 N. E. 562; *St. Louis, &c., v. Woods*, 77 Mo. 197.

⁴ *N. O. Nelson Co. v. Stephenson*, — Tex. Civ. App., — 168 S. W. 61; *Baker v. Bryan*, 64 Iowa 561, 21 N. W. 83; *R. Connor Co. v. Olson*, 136 Wis. 13, 115 N. W. 811.

⁵ *Owen v. Hill*, 67 Mich. 43, 34 N. W. 649.

one furnishing labor or materials after failure to take such bond is chargeable with notice that none had been taken, and consequently the school directors who should have taken such bond are not individually liable to one furnishing such labor or materials by reason of their failure to take such bond; nor is the district liable.¹

If the trustees by reason of their failure to exact a required bond designed to protect materialmen and laborers, are compelled to pay such indebtedness by reason of their failure, the amount of such indebtedness paid by them may be claimed by set-off in an action brought by the contractor for the contract price.²

If such bond is executed as required by statute, except that it was payable to the board of education instead of the State, and although it contained a condition to save the board harmless from such claims, such persons having claims for labor or materials may recover on the bond.³ And if the bond taken is conditioned for the performance of the work and that the contractor shall furnish the material used, and is not conditioned "to pay" the materialmen, it affords no protection to the district against an action for materials furnished the contractor.⁴

Where the statute requires the tribunal transacting the business of "any municipal corporation" to take a

¹ *Blanchard v. Burns*, 110 Ark. 515, 162 S. W. 63.

² *Wells v. Board, &c.*, 78 Mich. 260, 44 N. W. 267.

³ *Board, &c., v. Grant*, 107 Mich. 151, 64 N. W. 1050; *Wadsworth v. School District, &c.*, 7 Wash. 485, 35 Pac. 371.

⁴ *Puget Sound, &c., v. School District, &c.*, 12 Wash. 118, 40 Pac. 608.

bond to protect against claims of materialmen and laborers, school districts are held, for this purpose, to be municipal corporations.¹ And such statute is not in conflict with a constitutional provision which provides for a general and uniform system of public schools, and application of revenue from the common school fund.²

Where such required bond is not taken and an action is brought against the contractor, the judgment secured therein does not bar an action against the school district if the statute does not require that the district be made a party to such suit.³

The object of filing bonds by such contractors is not to give the bond validity, but to give notice to interested persons. Therefore filing the bond after the materials have been furnished does not prejudice the plaintiff, if it actually was filed, and the plaintiff had notice thereof before bringing suit.⁴

§ 33. Alteration, Repairs and Maintenance.

Towns and cities are obliged to keep school property in a safe condition, and are liable for any injury caused by the unsafe condition of the premises, provided they have knowledge of the defect, or are negligently ignorant of it.⁵ This knowledge or notice which is necessary to impose liability, may be presumed as a matter of

¹ *Maxon v. School District, &c.*, 5 Wash. 142, 32 Pac. 110.

² *Pacific M'fg Co. v. School District, &c.*, 6 Wash. 121, 33 Pac. 68.

³ *Pacific M'fg Co. v. School District, &c.*, *supra cit.*

⁴ *Wadsworth v. School District, &c.*, 7 Wash. 485, 35 Pac. 371.

⁵ *Streator v. Chrisman*, 182 Ill. 215, 54 N. E. 997; *Whitney v. Lowell*, 151 Mass. 212, 24 N. E. 47; *Parker v. Boston*, 175 Mass. 501, 56 N. E. 569.

law when the danger is great and manifest,¹ or it may be inferred from the notoriety of the defect.²

But notice to the janitor of a schoolhouse, who is lawfully appointed by the school committee, that a highway is in a defective and unsafe condition, — for example, the uncovered condition of a coal hole, — is not notice to the city. Such official is not a public official whose duties are to attend to municipal affairs, being appointed by and under the exclusive control of the school committee, and not under any control whatever by the city. Whatever may be their duties in regard to the care of schoolhouses committed to their charge, they have none in regard to the repair or condition of the public ways.³

A school committee is a board of public officers whose principal duties are prescribed by statute, and in the execution of these duties the members do not act as agents of the town, but as public officers in the performance of public duties. Besides having the general charge and superintendence of all the public schools of the town the statute usually delegates to them the care of schoolhouses, which includes the grounds on which the schoolhouses are erected. In pursuance of such duties the committee may lawfully order a tree on the grounds to be cut down, and if they are not in themselves negligent, they are not responsible for the negligence of the person employed to do the work. The

¹ *Prideaux v. Mineral Point*, 43 Wis. 513; *McGrail v. Kalamazoo*, 94 Mich. 52, 53 N. W. 955.

² *Reed v. Northfield*, 13 Pick. (Mass.) 94; *Padelford v. Eagle Grove*, 117 Iowa 616, 91 N. W. 899.

³ *Foster v. Boston*, 127 Mass. 290.

doctrine of *respondeat superior* is founded on the supposed benefit to the master, of the act of the servant, and does not apply to a public officer employing agents in the discharge of a public duty.¹

Where the statute empowers the County Superintendent with authority to condemn dilapidated school buildings, and makes it the duty of the trustees to repair the old building or erect a new one when notified by the superintendent of the condemnation, the taxpayers of the district cannot question the decision of the County Superintendent and the trustees as to the necessity of a new building. And the trustees may act before they see the order of condemnation.²

A township school director who is required by statute to keep in due order and condition the necessary schoolhouse furniture, it being further provided that his expenses shall subsequently be audited and paid, is not entitled to have the money advanced to him before the work is done.³ And an agent authorized by a vote of a school district to expend a specified percent of the school funds for the repair of a schoolhouse, is not thereby authorized to expend a greater amount although actually needed to properly repair the building.⁴

§ 34. Exclusiveness of Use.

It is not necessary that a schoolhouse be erected exclusively for public school purposes. And it has been

¹ McKenna v. Kimball, 145 Mass. 555, 14 N. E. 789; Nowell v. Wright, 3 Allen (Mass.) 166; Hill v. Boston, 122 Mass. 344.

² Trustees, &c., v. Jamison, 12 Ky. L. Rep. 719, 15 S. W. 1.

³ Hamtramck v. Holihan, 46 Mich. 127, 8 N. W. 720.

⁴ Davis v. School District, &c., 24 Me. 349.

held that a school district by an agreement with a builder that he should erect for a certain sum a schoolhouse, and build a public hall over the same to be his property, he allowing the district to have the use of the hall for various purposes connected with the school, did not exceed its power.¹

The purpose for which school districts are required to build schoolhouses, is to accommodate schools which are supported by the district, and which they are required by law to maintain. But the general object of all these requirements of the law is the education of children.² Hence it has been held that a private school not supported by a tax on the district, might by consent of the district be held in the schoolhouse, that such a school was for the furtherance of the general object and design of such erections, and so no unlawful use of the house, and that the committee to whom by law the general care of the house is given, had no legal right to prevent the house being used for that purpose. If the district might properly and legally allow the house to be used for such purpose, in the absence of any dissent by the district, the committee in charge might do the same, and give permission to use the house for the same object, and especially if it was generally approved by the voters and taxpayers of the district.³

A district may not part with the use and power of control over the schoolhouse permanently, nor for any such length of time as to prevent the building from being

¹ *George v. Second School District*, 6 Metc. (Mass.) 497.

² *Russell v. Dodds*, 37 Vt. 497.

³ *Chaplin v. Hill*, 24 Vt. 528.

used for the purpose of a district school, for which it was specially erected. But they may part with it for such limited period as will not interfere with their legitimate and proper use of it as a district schoolhouse. Therefore it was held that if a committee agree to let a party have the district schoolhouse for a private school during a vacation, and the party enter into the use thereof, the committee cannot revoke the agreement without just cause, nor can the want of authority to make the agreement be alleged in defense to an action by the lessee for exclusion therefrom.¹

The only remedy given a taxpayer against the illegal use of school property is that of injunction, and this remedy will be granted though the injury he complains of be very slight. If the schoolhouse, without authority of statute, is used for religious purposes, even though by vote of the district, such use is illegal against the protest of a single taxpayer, and an injunction will be granted upon application of such taxpayer.² But a schoolhouse is not constituted a place of worship by holding Sunday school or religious meetings therein not exceeding four times a year and then not interfering with the schoolwork.³

The legislature may grant to religious societies the temporary and incidental use of schoolhouses for religious meetings and Sunday schools, and such statute

¹ *Russell v. Dodds*, 37 Vt. 497.

² *Schofield v. School District*, 27 Conn. 499; *Hurd v. Walters*, 48 Ind. 148; *Spencer v. School District*, 15 Kan. 259; *Bender v. Streabich*, 17 Pa. Co. Ct. 609; *Dorton v. Hearn*, 67 Mo. 301; *School District, &c., v. Arnold*, 21 Wis. 657.

³ *State v. Dilley*, 95 Neb. 527, 145 N. W. 999.

does not violate the constitutional provision that no one shall be compelled to support a place of worship, and that no preference shall be given by law to any religious denomination, or mode of worship.¹ And the district has the right to use a schoolhouse for any district purposes;² or for educational purposes collateral to the main purpose, such as lectures, debates, or by permitting a private teacher of vocal music to give instruction in his art in the district schoolhouse, out of school hours, his pupils paying him a compensation therefor.³

Against trespassers the school authorities have control of the school buildings and land to the extent of excluding therefrom any person who enters to disturb the peace or interferes with the legitimate purposes of the school. But they have no right arbitrarily to exclude any one of their own caprice, or to exclude any decorous person from a school entertainment to which the public are invited.⁴ The right to the school property is in the district, and while the school authorities, by implication, have the right to occupy the schoolhouse when used for school purposes, they do not have exclusive control as against the public, that is, the inhabitants of the district, unless it is given to them by statute.⁵

Provided such use does not interfere with the school or injure the building, a secret society may legally con-

¹ *Nichols v. School Directors*, 93 Ill. 61; *Davis v. Boget*, 50 Iowa 11.

² *Trustees, &c., v. Osborne*, 9 Ind. 458.

³ *Appeal of Barnes*, 6 R. I. 591.

⁴ *Hughes v. Goodell*, 3 Pittsb. R. 264.

⁵ *Chaplin v. Hill*, 24 Vt. 528.

tract for the use of a public school building, especially if such contract is approved by the electors of the district.¹ But a schoolhouse may not be used for private dances which involve the removal of the desks therefrom ;² nor used as a theatre, or for the performance of theatricals as a business.³ And a school board having only such powers as are given by statute, cannot lease a school lot for production of oil and gas.⁴

§ 35. Personal Property.

The care and keeping of the schoolhouse, books, apparatus and other property of the district, is usually given by statute to the school board, and being given by statute to the school board does not confer upon them the right to purchase new property ; and especially not a safe in which to keep their records which are of small value.⁵ But where the board of directors have authority to provide for the teaching of music, the authority is implied to purchase a musical instrument for that purpose.⁶ Where the statute places the entire control of the district schools in the hands of the directors, a subdirector has no authority to forbid the use of apparatus supplied by the directors in the schools within his care on the ground that its purchase was

¹ *Cost v. Shinault*, 113 Ark. 19, 166 S. W. 740.

² *Lewis v. Bateman*, 26 Utah 434, 73 Pac. 509.

³ *Sugar v. Monroe*, 108 La. 677, 32 So. 961.

⁴ *Herald v. Board, &c.*, 65 W. Va. 765, 65 S. E. 102.

⁵ *Glidden, &c., v. School District, &c.*, 143 Wis. 617, 128 N. W. 285.

⁶ *Bellmeyer v. Marshalltown*, 44 Iowa 564 ; *Knabe v. Board, &c.*, 67 Mich. 262, 34 N. W. 568.

illegal, and the apparatus worthless. And an injunction will lie to restrain such subdirector from preventing the use of the apparatus.¹

Where a trustee has authority to bind his district by a contract for the purchase of school furniture, the fact that unnecessary articles are bought under a fraudulent contract, will not relieve the district from liability without a rescission of the contract by offering to return the articles so bought.²

To "select" means to choose or pick out, and "provide" means to furnish or supply. Consequently where the statute provides that the board of education shall "select" textbooks, furniture, and educational appliances for the schools, and that the school board of a district shall "provide" schoolhouses with proper furniture and appliances, there is no conflict of duty, and the school board has no authority to provide school furniture other than that selected by the board of education.³

§ 36. Apparatus and Appendages.

As used in the limitation of the power of a school board to purchase for school use, the term "apparatus" means an equipment of things provided and adopted as a means to some end, and includes any complex instrument or appliance for a specific action or operation, such as a mechanism so constructed as when operated to represent the relative motions of the earth

¹ District, &c., *v.* Meyers, 83 Iowa 688, 49 N. W. 1042.

² Johnson, &c., *v.* Citizens Bank, 81 Ind. 515.

³ Com. *v.* School Board, &c., 109 Va. 346, 63 S. E. 1081.

and moon with respect to each other and the sun, and explain the various phenomena caused by such motions, and other related subjects.¹

An "appendage" is something added to another thing either as an accessory to, or a subordinate part of,² even though not necessary to it.³ In general it may be said that the term, as used in connection with schoolhouses, applies to things connected with the building, or designed to render it suitable for use as a schoolhouse,⁴ and has been held to include a well,⁵ fence,⁶ a mathematical chart,⁷ lightning rods,⁸ brooms, pails, cups, fuel, and outhouses.⁹

The purchase of "necessary appendages" for the schoolhouse as authorized by statute, does not include a stereoscope and stereoscopic views.¹⁰ Nor are school charts exhibiting and illustrating matters to be taught to the pupils, to be classed as such.¹¹ But a mathematical chart may be deemed either apparatus or appendage.¹²

¹ Board, &c., v. Andrews, 51 Ohio St. 199, 37 N. E. 260.

² State Treasurer v. Somerville, &c., 28 N. J. L. 26.

³ State v. Fertig, 70 Iowa 272, 30 N. W. 633; *In re Bozeman*, 42 Kan. 456, 22 Pac. 628.

⁴ School District, &c., v. Perkins, 21 Kan. 536.

⁵ Hemme v. School District, &c., 30 Kan. 377, 1 Pac. 104.

⁶ Creager v. School District, &c., 62 Mich. 101, 28 N. W. 794.

⁷ School District v. Swayze, 29 Kan. 211. A mathematical chart was also held as "apparatus" in *School District v. Swain*, 29 Kan. 152. *Contra*: *Gibson v. School District, &c.*, 36 Mich. 404.

⁸ Monticello Bank v. Coffin's Grove, &c., 51 Iowa 350, 1 N. W. 592.

⁹ Creager v. School District, *supra cit.*; Hemme v. School District, *supra cit.*

¹⁰ Bourbon, &c., v. Perkins, 21 Kan. 531.

¹¹ Gibson v. School District, &c., 36 Mich. 404.

¹² School District v. Swayze, 29 Kan. 211.

And a fence surrounding the schoolhouse site is to be classed as a necessary appendage.¹

The grading and fencing of a schoolhouse site, providing water to supply the school even to the extent of digging a well, and the equipping of the schoolhouse with school furniture, are all a legitimate part of the construction of a schoolhouse, and the proper equipment of school property as authorized by a vote to purchase a site and erect a schoolhouse thereon.² But whether a well may properly be supplied under a statutory provision that the district board shall provide the necessary appendages for the schoolhouse during the time a school is taught therein, is a question of fact for a jury to decide.³

§ 37. Isolated Territory.

The obligation of a town to furnish the means for educating its inhabitants does not require the building of a schoolhouse in isolated territory. Consequently a town is not bound to build and maintain a schoolhouse on a small island within its territorial limits on which a few persons live having children of school age.⁴ And an inhabitant of an island having but one child of lawful school age, cannot enforce the establishment of a school upon such island, there being a sufficient number of public schools on the mainland, although the State law requires children of such age to attend school.⁵

¹ *Creager v. Wright, &c.*, 67 Mich. 262, 34 N. W. 568.

² *Chamberlain v. Board, &c.*, 57 N. J. L. 605, 31 Atl. 1033.

³ *Hemme v. School District, &c.*, 30 Kan. 377, 1 Pac. 104.

⁴ *Newcomb v. Rockport*, 183 Mass. 74, 66 N. E. 587.

⁵ *Davis v. Chilmark*, 199 Mass. 112, 85 N. E. 107.

§ 38. Offenses Against School Property.

To burn a schoolhouse cannot be arson at common law,¹ but is within a statute making arson extend to the burning of any tobaccohouse, warehouse, storehouse or "any other house or houses whatsoever",² and is also made arson by a statute providing that the wilful burning of any mill, or "other outhouse not parcel of any dwelling house" in that a schoolhouse is within this description.³

An action of trespass may be maintained by school directors who are in actual occupancy of a schoolhouse, although the trustees of schools hold the legal title.⁴ But such action may not be maintained by the inhabitants of the district, inasmuch as they have no estate in the property of the district.⁵ And where an expelled pupil enters a schoolroom and refuses to leave when requested by the teacher, such pupil is guilty of "loitering" on public school grounds under a statute making such loitering an offense.⁶

§ 39. Saloons and Intoxicants.

Under a law prohibiting the licensing of a saloon within four hundred feet of a school building on the same street, the measurement is to be taken from the nearest point of each building to the other, whether they are

¹ *Wallace v. Young*, 44 Ky. 155.

² *Ibid.*

³ *Jones v. Hungerford*, 4 Gill & J. (Md.) 402. See also, *State v. O'Brien*, 2 Root (Conn.) 516.

⁴ *Alderman v. School Directors*, 91 Ill. 179; *School District v. Arnold*, 21 Wis. 657.

⁵ *Chaplin v. Hill*, 24 Vt. 528.

⁶ *King v. State*, — Tex. Cr. App., — 169 S. W. 675.

close to the street or some distance away from it, and even though but one room in the building is used for such sale, as is the usual arrangement in a hotel building.¹ And an entrance from the street on which the school is located to the place where the intoxicants are sold on another street may bring such place within the law.²

A statute prohibiting the sale of intoxicating liquors in certain specified localities, is not unconstitutional because its application is not general.³ And therefore the statute may authorize a court to make an order prohibiting the sale or giving away of liquor within three miles of a schoolhouse on petition of a majority of the adult residents within such limit.⁴

If a statute prohibits the sale of intoxicating liquor to "any student of the State University, or of any school, college or academy", such prohibition is not confined to minors.⁵ And if the statute prohibits such sales to "any minor person, pupil, or student, while attending school", it applies only to minors who are pupils or students in some public school, seminary, academy, or other institution of learning within the State.⁶ For this purpose a writing school to be continued for twenty days only, is a "school" covered

¹ *Com. v. Jones*, 142 Mass. 573, 8 N. E. 603.

² *Com. v. Everson*, 140 Mass. 434, 5 N. E. 155.

³ *Howell v. State*, 71 Ga. 224; *Town of Centreville v. Miller*, 51 Iowa 712, 2 N. W. 527; *State v. Stovall*, 103 N. C. 416, 8 S. E. 900; *Heck v. State*, 44 Ohio St. 536, 9 N. E. 305; *State v. Rauscher*, 69 Tenn. 96.

⁴ *Trammel v. Bradley*, 37 Ark. 374; *Butler v. State*, 89 Ga. 821, 15 S. E. 763.

⁵ *State v. Cooper*, 35 Mo. App. 532.

⁶ *State v. Richter*, 23 Minn. 81.

by the statute.¹ And a parochial school under proper authorities is within the meaning of a statute excluding the sale of intoxicating liquors within two hundred feet of a school.²

§ 40. Conveyance of School Property.

A deed executed in good faith by the acting treasurer of the ministerial and school fund of a town, authorized by an order of the acting trustees will pass a good title although the record does not show that the treasurer and trustees are officers *de jure* as well as *de facto*.³ But a deed executed by the treasurer of a town, as such, and by a majority of the selectmen of the town, as such, is not valid where the statute makes the selectmen, town clerk, and treasurer, for the time being, of every town in the State a body corporate, and trustees for the ministerial and school funds, with power to convey lands belonging to such funds.⁴

If a deed merely specifies the use or purpose for which the land is granted to the city, as "for school purposes", the purpose expressed does not qualify the estate taken, but simply regulates and defines the use for which the land granted shall be held. The specification of the purpose is not construed as a condition subsequent, and the property upon a discontinuance of the use, does not revert to the grantor or his heirs.⁵ And where a deed

¹ *Farrell v. State*, 32 Ala. 557.

² *Rice v. Board, &c.*, 90 Atl. (R. I.) 419.

³ *Abbott v. Chase*, 75 Me. 83.

⁴ *Warren v. Stetson*, 30 Me. 231.

⁵ *Dillon on Munic. Corp.*, 5th ed., § 979; *Avery v. U. S.*, 104 Fed. 711; *Warren County v. Patterson*, 56 Ill. 111; *Stephens v. Murray*,

conveying real estate specifies that it is to be used for school purposes, the real estate itself must be so used, and cannot be converted into money to be used for school purposes.¹ As public corporations may be the object of private bounty, a conveyance of land to a town for a schoolhouse site is based upon a sufficient consideration.²

A lease of school lands by a board of supervisors, under a statute which authorizes such lease upon petition of a majority of the resident heads of families, is void unless the records of the board show that such petition was made, inasmuch as such conferred jurisdiction is limited.³

Where the statute provides that in cities beyond a certain population no sale of school lands shall be made except by the city council, upon the written request of the board of education, such matter lies within the discretion of the board, and a court has no right to make an order to the mayor and comptroller to execute a deed and take a mortgage to the city.⁴

The authority of a school district to sell its property is to sell for money, and not to barter it. Any other form of sale than for money would be contrary to public policy. Consequently a contract to purchase school property if awarded a contract for a school building is

132 Mo. 468, 34 S. W. 56; *Tift v. Buffalo*, 82 N. Y. 204; *Coffin v. Portland*, 16 Oreg. 77, 17 Pac. 580.

¹ *Trustees, &c., v. Braner*, 71 Ill. 546.

² *Dillon on Munic. Corp.*, 5th ed., § 981; *Castleton v. Langdon*, 19 Vt. 210; *Le Couteulx v. Buffalo*, 33 N. Y. 333.

³ *Bolivar County v. Coleman*, 71 Miss. 832, 15 So. 107.

⁴ *People v. Roche*, 124 Ill. 9, 14 N. E. 701.

invalid.¹ But where a schoolhouse has become unfit for the use of the district, it may be sold by the school district,² and where a committee is authorized by vote of the district, to sell the schoolhouse, it must be sold for cash, a sale on credit being void unless later ratified by the district.³ If a sale of a school building is rescinded by the district, on the ground of fraud, the amount paid by the intending purchaser must be refunded.⁴

¹ *Caldwell v. Bauer*, 179 Ind. 146, 99 N. E. 117.

² *Whitmore v. Hogan*, 22 Me. 564.

³ *School District, &c., v. Aetna, &c.*, 62 Me. 330.

⁴ *Ibid.*

CHAPTER IV

OF SCHOOL OFFICERS

§ 41. State Superintendent.

The State Superintendent, or School Commissioner in many States has general supervision and control of schools, school officials, and school funds.¹ This supervisory power usually includes the power of removal of officials,² and to hear and determine appeals from subordinate officers.³ But the power to determine appeals may not be delegated to an assistant.⁴

Where the legislature, in the enactment of school laws, has created a series of tribunals within the school officials with powers to settle disputes arising in school matters, and giving appellate jurisdiction within such tribunals to the State Superintendent, his decision thereon has the conclusive quality of a judgment pronounced in a legally created court of limited juris-

¹ *People v. Inglis*, 161 Ill. 256, 43 N. E. 1103; *Thompson v. Board, &c.*, 57 N. J. L. 628, 31 Atl. 168; *People v. Skinner*, 74 N. Y. App. Div. 58, 77 N. Y. S. 36; *State v. Daniel*, 52 S. C. 201, 29 S. E. 633.

² See § 47, *infra*.

³ *Field v. Com.*, 32 Pa. St. 478; *People v. Draper*, 63 Hun (N. Y.) 389, 18 N. Y. S. 282; *State v. Custer*, 11 Ind. 210; *State v. Albertson*, 54 N. J. L. 72, 22 Atl. 1083; *Easton v. Calendar*, 11 Wend. (N. Y.) 90; *State v. Whitford*, 54 Wis. 150, 11 N. W. 424.

⁴ *Joint School District, &c., v. Wolfe*, 12 Wis. 685.

diction acting within the bounds of its authority, and accordingly upon its merits is not reviewable,¹ although it may be open to appeal on a question of law.²

A State Superintendent cannot reverse acts of discretion. And when the statute gives appellate powers to a school commissioner to hear and determine appeals from the decisions or doings of school committees, district meetings, trustees, and others, taken to him by persons aggrieved by such decisions or doings, he acquires from such statute no power to reverse the majority decision of the school committee as to the location of a schoolhouse about to be built when such decision involves no violation of right. A grievance supposes a wrong growing out of some infraction of law,

¹ *Thompson v. Board, &c.*, 57 N. J. L. 628, 31 Atl. 168; *Park v. Independent, &c.*, 65 Iowa 209, 21 N. W. 567; *Wood v. Farmer*, 69 Iowa 533, 29 N. W. 440; *People v. Collins*, 34 How. Pr. (N. Y.) 336; *People v. Eckler*, 19 Hun (N. Y.) 609; *State v. Whitford*, 54 Wis. 150, 11 N. W. 424; *Appeal of Smith*, 4 R. I. 590.

² *Watkins v. Huff*, 94 Tex. 631, 64 S. W. 682; *State v. Thayer*, 74 Wis. 48, 41 N. W. 1014; *People v. Skinner*, 159 N. Y. 162, 53 N. E. 806. There is no distinction in point of conclusiveness between the decisions of a special tribunal such as a State Superintendent and the judgments of a court of record. The sole difference is in the presumption of jurisdiction that inheres in general courts alone. If the right of the special tribunal to pass on the matter in controversy between the parties be established, its determinations are conclusive upon the parties until reversed by some appellate court. As a general rule, whenever any person is given authority to hear and determine any question, such determination is, in effect, a judgment having all the properties of a judgment pronounced in a legally created court of limited jurisdiction acting within the bounds of its authority; *Thompson v. Board, &c.*, 57 N. J. L. 628, 31 Atl. 168. When the law admits of different constructions it is well settled that the usage under it and the practical construction of it for a series of years, is entitled to great weight, and sometimes may be decisive; *Appeal of Cottrell*, 10 R. I. 615.

of which the aggrieved party has a right to complain, and the statute instead of throwing the discussion and decision of such complaints before the ordinary legal tribunals, gives an appeal to the commissioner or superintendent of public schools in order to prevent tedious litigation, scandal and expense. The commissioner is, from a legal viewpoint, a visitor of the public schools of the State, whose speedy and noiseless method of settling disputes arising between the different officers and members of the school body is designed to preserve that peace and harmony so essential to its well-being. He may decide questions involving a wrong done, but cannot reverse acts of discretion. Any other construction of this appellate power would throw every discretionary power vested by law in the school officials into his hands, since upon appeal he would be authorized to revise and control their exercise of such discretion.¹

Where appeal to the Superintendent of Public Instruction is provided as a remedy for one who is aggrieved by a decision of the trustees to abolish a school and consolidate with another, such appeal is a necessary one, even though it cannot be taken in time to secure the benefit of the school fund, inasmuch as an injunction might issue to prevent use of the funds pending the appeal.² And where the statute provides that one aggrieved by the action of a school board may appeal to the County Superintendent, and from him to the Superintendent of Public Instruction, such appeal is the proper course for one aggrieved at the action

¹ Appeal of Gardiner, 4 R. I. 602.

² McCollum v. Adams, 110 S. W. (Tex.) 526.

of the school board in relocating a schoolhouse, and an injunction will not be granted.¹

Although the State Superintendent of Schools has the power to remove from office a County Superintendent for neglect of duty, incompetency, or immorality, there must be charges filed, notice given, opportunity for presenting a defense, and a hearing must be given.²

Where the statute does not specify a method of voting, the election of a State Superintendent may be either *viva voce* or by ballot.³ And where the school trustees meet on the day specified by statute for the purpose of electing a superintendent, and continue in session and to ballot until he is elected, the fact that he is not elected until after midnight will not render the election invalid.⁴

It is against public policy, and consequently illegal, for a member of a board of trustees to vote for himself for the position of Superintendent of Schools.⁵ And inasmuch as the result of the ballot expresses the election, it is not necessary that an elected official be declared elected.⁶

A school superintendent need only receive a majority of the votes cast, and it is not necessary that he receive

¹ *Kinney v. Howard*, 133 Iowa 94, 110 N. W. 282; *Field v. School District, &c.*, 83 Kan. 186, 109 Pac. 775.

² *Field v. Com.*, 32 Pa. St. 478. See also, § 47, *infra*.

³ *Johnson v. De Hart*, 72 Ky. 640; *State v. Kilroy*, 86 Ind. 118.

⁴ *State v. Vanosdal*, 131 Ind. 388, 31 N. E. 79.

⁵ *Hornung v. State*, 116 Ind. 458, 19 N. E. 151.

⁶ *People v. Stone*, 78 Mich. 635, 44 N. W. 333.

a favorable vote of a majority of all directors present at the meeting.¹

Where the statute allows "actual traveling expenses" to a superintendent of public instruction while making his official visits to schools in his charge, hotel bills incurred by him are not a part of such expenses.² And when the compensation of a State Superintendent of public instruction is fixed by statute not to exceed a specified amount, with another fixed sum for his traveling expenses, and still another fixed sum for clerk hire, such officer has no right to appropriate all these sums without incurring the expenses as contemplated.³ A statute giving the State Superintendent authority to disburse a fund for clerical assistance in the examination of teachers' papers does not by such authority make him the owner of the fund.⁴

Where the statute requires that suits instituted by the Superintendent of Education shall be through the Attorney General or proper district attorney, a suit brought by him through a private attorney will be dismissed.⁵

§ 42. County Superintendent.

A County Superintendent of public instruction can exercise only such powers as are specially granted by statute or are necessarily implied to carry them into

¹ Attorney General *v.* Bickford, 77 N. H. 433, 92 Atl. 835. But see, State *v.* Matson, 97 Neb. 746, 151 N. W. 304.

² State *v.* La Grave, 23 Nev. 88, 42 Pac. 797.

³ State *v.* Cunningham, 82 Wis. 39, 51 N. W. 1133.

⁴ State *v.* Stockwell, 23 N. D. 70, 134 N. W. 767.

⁵ Fay *v.* Jumel, 35 La. An. 368.

effect.¹ The record of his proceedings must show that he has jurisdiction or his acts will be void. He has no authority to purchase and pay for lands for school purposes without special authority.² And if a County Superintendent is no longer able or fit to perform the duties of his position, he may be dismissed.³ Not merely good character, but good reputation is essential to the greatest usefulness in such a position as that of superintendent of schools. Therefore one against whom an indictment for a crime involving moral turpitude has been returned may be dismissed for the good of the schools even though the accused is not found guilty on the indictment.⁴

Where by statute the County Superintendent is allowed certain fees in connection with duties performed in his office in lieu of a salary, a large discretion is vested in him as to the duties to be performed, and neither the county commissioners nor the courts have a right to interfere except upon abuse of his discretion or in case of errors apparent from inspection or established by proof.⁵ Among such items held proper charges are: official correspondence with teachers, school officers and others pertaining to school affairs; holding teachers' examinations; examining into a complaint that a teacher would not allow certain children to attend

¹ *Ratcliff v. Faris*, 6 Neb. 539.

² *Board, &c., v. Billings*, 15 Fla. 686.

³ *Hufford v. Conover*, 139 Ind. 151, 38 N. E. 328; *People v. Mays*, 17 Ill. App. 361; *State v. Crumbaugh*, 26 Tex. Civ. App. 521, 63 S. W. 925; *Freeman v. Bourne*, 170 Mass. 289, 49 N. E. 435.

⁴ *Freeman v. Bourne*, 170 Mass. 289, 49 N. E. 435.

⁵ *Smith v. Jefferson, &c.*, 10 Col. 17, 13 Pac. 917.

school; and visits to the State Superintendent;¹ but not for rendering reports to the bureau of statistics.²

And where the statute provides that the County Superintendent shall receive such pay for his services as may be allowed him by the county court the matter is one of unlimited discretion for the court, whether it fixed the salary in advance, or left the allowance to be determined after the duties were performed; and the decision of the court is final.³ Where the legislature has fixed the salary of a County Superintendent at a specified sum, and the board after his election fixes it at a smaller sum he may receive the small sum, giving a receipt therefor, and still not be estopped from recovering the balance of his salary.⁴

The County Superintendent belongs to the executive department of the government; he acts in neither a judicial nor quasi-judicial capacity in licensing persons to teach, and he has a discretion on the subject of licensing teachers, which is so far analogous to judicial discretion that he is protected from any claim for damages on account of any mistake in his decisions, or error in judgment, either in granting or withholding a license. Yet he is liable in damages for maliciously withholding a license to teach from an applicant lawfully entitled to receive the same, and he will be held to have acted maliciously where he acts either from wilful and wicked or from corrupt motives.⁵

¹ *Smith v. Jefferson, &c.*, 10 Col. 17, 13 Pac. 917.

² *Yeager v. Gibson County*, 95 Ind. 427.

³ *Haile v. Young*, 74 Tenn. 501.

⁴ *Clarke v. Milwaukee County*, 53 Wis. 65, 9 N. W. 782.

⁵ *Elmore v. Overton*, 104 Ind. 548, 4 N. E. 197.

Where a County Superintendent writes to the State Superintendent that an applicant for a certificate to teach is not of good moral character, he is in no better position than any other citizen who is interested in the welfare of the public school system. Such statement made in good faith, based on reasonable information, and not actuated by express malice, is privileged.¹

The acceptance by a town commissioner of the office of County Superintendent operates *ipso facto* to vacate the office of commissioner, and he is not thereafter either a *de jure* or *de facto* holder of that office.² And where the statute provides that certain qualifications are necessary to make a person eligible to an office, such as that of County Superintendent, one who does not possess such qualifications at the time of election, but possesses them at the time of his induction into office, is sufficiently qualified.³

Where the statute allows an appeal from the school board to the County Superintendent it does not give him judicial powers.⁴ That officer can only give opinion and advice. He cannot decide the controversy so as to bind the parties, it being the power of the State Superintendent to try disputed matters and judicially decide them.⁵

A County Superintendent is not liable for his official

¹ *Tanner v. Stevenson*, 138 Ky. 578, 128 S. W. 878; *Barry v. McCollom*, 81 Conn. 293, 70 Atl. 1035.

² *Whitehead v. Pittman*, 165 N. C. 89, 80 S. E. 976.

³ *Bradfield v. Avery*, 16 Idaho 769, 102 Pac. 687.

⁴ *Sioux City v. Pratt*, 17 Iowa 16.

⁵ *Buren v. Albertson*, 54 N. J. L. 72, 22 Atl. 1083; *Fitch v. Smith*, 57 N. J. L. 526, 34 Atl. 1058. See also, § 41, *supra*.

acts, unless they were wanton and malicious, where he has a discretion in their performance.¹

§ 43. School Directors.²

If the law requires the election of a school board within thirty days after the organization of a district, such law in the absence of fraud is directory only.³ And at an election of school trustees, if certain irregularities occur, such as changing the location of the polling place, which are not shown to have changed the result, the election will not thereby be invalidated.⁴

The statutory provision that school officers shall be elected by ballot is mandatory ; but where at a regular meeting such officers are unanimously elected by *viva voce* vote, no other person claiming to have been elected, have qualified and assumed the office, they will not be ousted by proceedings *quo warranto*.⁵ And the officers of a school district hold their offices until their successors are elected or appointed.⁶

New members of a school board enter upon their duties as soon as the term of their predecessors expire,

¹ *Branaman v. Hinkle*, 137 Ind. 496, 37 N. E. 546.

² The terms "School Directors", "School Board", "Board of Education", "School Committee", "School Trustees", and other terms of local usage as applied to the persons, collectively, in whom the legislature has placed the management of public schools, as used herein, are synonymous.

³ *People v. Crossley*, 261 Ill. 78, 103 N. E. 537.

⁴ *Simmons v. People*, 119 Ill. 617, 9 N. E. 220.

⁵ *Roeser v. Gartland*, 75 Mich. 143, 42 N. W. 687.

⁶ *Walker v. Miner*, 32 Vt. 769 ; *Rowell v. School District*, 59 Vt. 658, 10 Atl. 754 ; *Attorney General v. Burnham*, 61 N. H. 594 ; *School, &c., v. Powner*, 126 Ind. 528, 26 N. E. 484 ; *State v. Fagan*, 42 Conn. 32.

and they are then entitled to participate in the organizing of the new board.¹ In deciding their terms of office the casting of lots to determine their respective terms, by trustees of a school district legally elected and qualified, is not illegal.²

Even in the same State it is sometimes provided that larger school districts elect a board of education, while the smaller ones are governed by the district committees.³

School directors, or trustees, their powers and duties having been derived exclusively from statute, can exercise no powers other than those expressly granted, or such as are clearly implied from such granted powers.⁴ If they exercise powers and functions which the statute does not confer upon them, they are responsible for all losses that may ensue.⁵ Being public officers they are subject to the same rules as other public officers in respect to their implied powers; and such powers will be implied only when the exercise thereof is necessary to the performance of other duties imposed upon them by the statute.⁶

All persons dealing with school officers are presumed to have full knowledge of the limitations of the powers of such officers to bind their corporations, and the limit of the powers of a school board must be recognized by

¹ Appeal of Royce, 1 Walk. (Pa.) 215.

² McGinnis v. Board, &c., 32 Ky. L. Rep. 1289, 108 S. W. 289.

³ Hassett v. Carroll, 85 Conn. 23, 81 Atl. 1013.

⁴ Crawford v. District, &c., 68 Oreg. 388, 137 Pac. 217; Baxter v. Davis, 58 Oreg. 109, 112 Pac. 410.

⁵ Adams v. State, 82 Ill. 132.

⁶ A. H. Andrews Co. v. Delight, &c., 95 Ark. 26, 128 S. W. 361.

those contracting with them.¹ Persons dealing with a school board are also chargeable with notice of a valid by-law adopted by them.²

In so far as directors and trustees act within their authority, their contracts are binding.³ But school directors have no right to bind either themselves or their successors by any contract which shall relieve them from the official duty and responsibility which they owe to the people whom they represent.⁴

A board of school directors are public officers whose duties are defined by statute.⁵ Being of statutory creation they are only entitled to such compensation for the performance of their prescribed duties as are fixed by statute.⁶ Therefore, a board of directors have no authority to employ one of their number to oversee the completion of a schoolhouse abandoned by the contractor, and bind the district for payment, nor

¹ *Slattery v. School, &c.*, 43 Ind. App. 58, 86 N. E. 860; *State v. Freed*, 10 Ohio Cir. Ct. 294.

² *Montenegro-Riehm Music Co. v. Board, &c.*, 147 Ky. 720, 145 S. W. 740.

³ *Bloomington, &c., v. National School, &c.*, 107 Ind. 43, 7 N. E. 760; *State v. Freed*, 10 Ohio Cir. Ct. 294; *Rutledge v. McCue*, 10 Kulp (Pa.) 57; *Adams v. State*, 82 Ill. 132; *Knabe v. Board, &c.*, 67 Mich. 262, 34 N. W. 568.

⁴ *Wood v. Medfield*, 123 Mass. 545; *Peers v. Board, &c.*, 72 Ill. 508; *Seeger v. Mueller*, 133 Ill. 86, 24 N. E. 513; *Union School District, &c., v. Crawfordsville, &c.*, 102 Ind. 473, 2 N. E. 194; *Wright v. Rosenbloom*, 52 N. Y. App. Div. 579, 66 N. Y. S. 165; *Honaker v. Board, &c.*, 42 W. Va. 170, 24 S. E. 544; *Conley v. School Directors*, 32 Pa. St. 194; *Crawford v. District, &c.*, 68 Ore. 388, 137 Pac. 217.

⁵ *Ogden v. Raymond*, 22 Conn. 379; *Sherlock v. Winnetka*, 68 Ill. 530.

⁶ *Upton v. County of Clinton*, 52 Iowa 311, 3 N. W. 81.

can such trustee recover from the district for such services rendered.¹ And the powers given to the school officers by statute cannot be taken from them by a vote of the district, as for example, the power to provide board for the teachers.²

A school trustee in the discharge of his duties is a special agent whose powers are limited, and it is incumbent upon those who undertake to deal with him in that capacity, to ascertain whether he is acting within his authority.³ But a school trustee is more than an agent of the district he represents. He is a public officer and holds fiduciary relations with his district.⁴

Where the law gives the district board full control over the schools of the district, the power to appoint a superintendent of schools is incident thereto.⁵ But power to appoint a superintendent of music is not to be implied.⁶

School boards have no authority to offer rewards for detection and punishment of crime.⁷ And, in absence of statutory authority, a school board has no authority to discipline its employees by the imposition of a fine.⁸

¹ *Moore v. Independent, &c.*, 55 Iowa 654, 8 N. W. 631.

² *School District, &c., v. Currier*, 45 N. H. 573.

³ *Union, &c., v. First Nat'l Bank*, 102 Ind. 464, 2 N. E. 194; *Bloomington, &c., v. National, &c.*, 107 Ind. 43, 7 N. E. 760; *Mest v. School District, &c.*, 2 Woodw. (Pa.) 257; *Roland v. Reading, &c.*, 161 Pa. St. 102, 28 Atl. 995. But see, *Wheeler v. Alton, &c.*, 66 N. H. 540, 23 Atl. 89.

⁴ *Axt v. Jackson, &c.*, 90 Ind. 101; *Wheeler v. Alton, &c.*, 66 N. H. 540, 23 Atl. 89.

⁵ *Stuart v. Kalamazoo*, 30 Mich. 69; *Spring v. Wright*, 63 Ill. 90.

⁶ *Perot v. Philadelphia*, 11 Phila. 181.

⁷ *Luchini v. Police Jury*, 126 La. 972, 53 So. 68.

⁸ *Farrell v. Board, &c.*, 67 Misc. Rep. 187, 122 N. Y. S. 289.

School directors may become criminally liable, as where two or more members of a school board agree together to exact from a school teacher a sum of money in consideration of a contract of employment to teach in a public school; and such agreeing together is unlawful and constitutes the crime of conspiracy.¹

Where the city charter confers upon the board of education the power to enact rules for the conduct of their proceedings, no authority is thereby given to change a rule of the charter.² And where a statute of a State is in conflict with a by-law of a board of education, the statute prevails.³ But the provisions of a city charter, providing that vacancies shall be filled by the council of the city, and which consolidates the city and town, controls over the provisions of a general statute which provides that vacancies pertaining to public schools shall be filled by the school committee.⁴ And a school board acting under a special charter, upon a repeal thereof, cannot constitute a *de facto* board under another act.⁵

A disputed claim may be compromised by the prudential committee as the general financial agent of the district.⁶ He may also furnish wood to the district on his own account and collect a reasonable price for it.⁷

If a district without a schoolhouse vote not to build

¹ *Bundy v. State*, 95 Ark. 460, 130 S. W. 522.

² *Malloy v. Board, &c.*, 102 Cal. 642, 36 Pac. 948.

³ *People v. Van Siclen*, 43 Hun (N. Y.) 537.

⁴ *State v. Hatch*, 82 Conn. 122, 72 Atl. 575.

⁵ *People v. Welsh*, 225 Ill. 364, 80 N. E. 313.

⁶ *Norton v. Tinmouth, &c.*, 37 Vt. 521.

⁷ *Ibid.*

one, such vote does not discharge the school directors from their duty to establish and maintain a free public school in such district.¹ And where a legislative act imposes a fine upon a board of directors who fail to perform certain duties, such act is not to be construed so as to impose a penalty on a director who has done his duty.²

A board of education may appoint a member as an agent to secure a lease of land for school purposes.³ And the appointment of an agent by an incorporated State Board of Education need not be under seal.⁴

Any liability created by the wrongful action of a school board, by statute made a body corporate, is against the corporation and not against the individual members.⁵ But where the school directors, or clerk of the board, commit a tort in entering upon the school records the reason for dismissing a teacher, the district is not liable therefor.⁶

To enjoin school directors at the suit of a mere taxpayer it must be shown that an injury to his property rights has been sustained or threatened; otherwise an injunction will not lie.⁷

A school officer may not at the same time hold more than one public office, and the offices of postmaster and school trustee being incompatible, consequently can-

¹ *School Directors v. People*, 186 Ill. 331, 57 N. E. 780.

² *Com. v. Herr*, 39 Pa. Super. Ct. 454.

³ *Board, &c., v. Harvey*, 70 W. Va. 480, 74 S. E. 507.

⁴ *Board, &c., v. Greenbaum*, 39 Ill. 609.

⁵ *Foster v. Reynolds*, 66 Misc. Rep. 133, 123 N. Y. S. 273.

⁶ *Wiest v. School District, &c.*, 68 Oreg. 474, 137 Pac. 749.

⁷ *Lagow v. Hill*, 143 Ill. App. 523, 87 N. E. 369.

not be held by the same person,¹ and the acceptance of an incompatible office operates *ipso facto* to vacate the office theretofore held.²

§ 44. Must Act as Unit.

A school board, by statute made a body corporate, must act as a unit, in the manner prescribed by statute or common law, as a board convened for the transaction of business, by a majority vote,³ and an act of the minority is not sufficient.⁴ But a majority may lawfully do official acts, especially after a refusal of a minority to act with them;⁵ although a majority of the board acting separately and as individuals cannot so act as to make a contract on behalf of the board, nor direct the issuance of an order to pay it.⁶

Where the statute provides for the joint action of two officials, neither of them may act alone.⁷ But a quorum

¹ Johnson v. Sanders, 131 Ky. 537, 115 S. W. 772.

² Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976.

³ Herrington v. District, &c., 47 Iowa 11; State v. Leonard, 3 Tenn. Ch. 177; Lee v. Parry, 4 Denio (N. Y.) 125; Keeler v. Frost, 22 Barb. (N. Y.) 400; American Heating, &c., v. Board, &c., 81 N. J. L. 423, 79 Atl. 313; Cook v. White, &c., 33 Ky. L. Rep. 926, 111 S. W. 686; Byrne & Read v. Board, &c., 140 Ky. 531, 131 S. W. 260; Lamaster v. Wilkerson, 143 Ky. 226, 136 S. W. 217.

⁴ People v. Smith, 149 Ill. 549, 36 N. E. 971; State v. Treasurer, &c., 22 Ohio St. 144.

⁵ Kingsbury v. Centre School District, 12 Metc. (Mass.) 90; Schofield v. Watkins, 22 Ill. 66; McCoy v. Curtice, 9 Wend. (N. Y.) 17.

⁶ State v. Treasurer, &c., 22 Ohio St. 144; Pennsylvania, &c., v. Board, &c., 20 W. Va. 360; Honaker v. Board, &c., 42 W. Va. 170, 24 S. E. 544; Cary Library v. Bliss, 151 Mass. 364, 25 N. E. 92; Morville v. Fowle, 144 Mass. 109, 10 N. E. 766.

⁷ State v. School District, &c., 22 Neb. 48, 33 N. W. 480.

of a board may take any action that the whole board might take, unless the statute otherwise provides.¹

A school district is not bound by the acts of an individual member of the board who does not act by authority of the board.² And a contract by five of the nine members of a school board who act independently of each other is not binding on the district unless ratified;³ they can bind the district only when they convene and act together as a board.⁴ Nor do casual conversations among the members of a school board bind the district. Binding action can be taken only at a regular or special meeting.⁵ Although if all are present they may take official action even though the meeting is not formally called.⁶

§ 45. Discretion and Good Faith.

In the performance of the duties imposed by law upon school directors they must exercise judgment and discretion. This discretion will not be disturbed by the courts, and relief will be given only when their action is capricious, arbitrary or shows bad faith tantamount to fraud.⁷

¹ Trustees, &c., v. Brooks, 163 Ky. 200, 173 S. W. 305.

² Markey v. School District, &c., 58 Neb. 479, 78 N. W. 932; Kane & Co. v. School District, &c., 5 Kan. App. 260, 47 Pac. 561.

³ Richards v. School, &c., 132 Iowa 612, 109 N. W. 1093.

⁴ School District, &c., v. Jackson, 110 Ark. 262, 161 S. W. 153; Ryan v. Humphries, 150 Pac. (Okla.) 1106.

⁵ Armstrong v. School Directors, &c., 160 Ill. App. 430.

⁶ Butler v. Windsor, 155 Wis. 626, 145 N. W. 180.

⁷ Williams v. Board, &c., 81 Kan. 593, 106 Pac. 36; Wilson v. Board, &c., 233 Ill. 464, 84 N. E. 697; Jeffries v. Board, &c., 135 Ky. 488, 122 S. W. 813; State v. District, &c., 135 Wis. 619, 116

What rules and regulations will best promote the interests of the schools under their immediate control, and what branches shall be taught, and what textbooks shall be used, are matters usually left to the determination of the directors, and must be settled by them from the best lights they can obtain from any source, keeping always in view the highest good of the whole schools. Good order can only be obtained by enforcing discipline, and that power is largely committed to the directors. They have the power of suspension and expulsion, and they may exercise that power as a means of discipline for the causes mentioned in the statute, or implied from the powers given them.

The expulsion or suspension of a pupil from the benefits and privileges of the school for what is considered incorrigibly bad conduct, implies deliberation and decision on the part of the directors, or as it is sometimes expressed, they act judicially in a matter involving discretion in relation to the duties of their office. And a declaration against the directors of a public school for improperly exercising their duties is subject to, a demurrer if it does not state that they acted either wantonly or maliciously.

This rule is certainly a reasonable one. A mere mistake in judgment, either as to their duties under the law, or as to the facts submitted to them, ought not to subject such officers to an action. They may judge

N. W. 232; *State v. Board, &c.*, 122 Tenn. 161, 121 S. W. 499; *Cross v. Board, &c.*, 33 Ky. L. Rep. 472, 110 S. W. 346; *Venable v. School, &c.*, 149 N. C. 120, 62 S. E. 902.

wrongly, and so may a court or other tribunal, but the party complaining can have no action when such officers act in good faith and in the line of what they honestly think is their duty. Any other rule might work great hardship to honest men, who, with the best of motives have faithfully endeavored to perform the duties of these inferior offices. It is not enough to aver the action of such officer erroneous, but it must be averred and proved that such action was taken in bad faith, either wantonly or maliciously.¹ And the decision of a school committee to close a school for reason of the small attendance will *prima facie* be presumed done in good faith, and their judgment correct.²

The discretion of school directors in the management of public schools will not be interfered with by the courts when their acts are legal,³ but their illegal acts will be restrained by the courts as they would restrain any other official wrong-doing.⁴ The courts may also act when a school board is evenly divided on a matter and are therefore unable to act.⁵

§ 46. Qualifying of Officers.

Where the statute provides that school directors in order to qualify shall subscribe the oath of office and file it with the clerk, the statute is mandatory and

¹ McCormick v. Burt, 95 Ill. 263; Donahoe v. Richards, 38 Me. 389; Price v. Barrett, &c., 9 Pa. Co. Ct. 395; Stewart v. Southard, 17 Ohio St. 402.

² Morse v. Ashley, 193 Mass. 294, 79 N. E. 481.

³ Com. v. Jenks, 154 Pa. St. 368, 26 Atl. 371; *In re* Dublin, &c., 14 Pa. Co. Ct. 464; *In re* Washington, &c., 15 Pa. Co. Ct. 509.

⁴ Com. v. Williamson, 30 Leg. Int. (Pa.) 406.

⁵ *In re* Bloomsburg, &c., 4 Pa. Co. Ct. 411.

an oral oath is not a compliance therewith;¹ and the qualifying of a school officer may include the taking of oath and the giving of a required bond.² Failure to qualify, or to take and subscribe the oath of office within the time prescribed by law vacates the office.³

When the day specified by statute as the day on which an officer must qualify falls on a legal holiday, such officer qualifying on the next day following is an officer *de jure*.⁴

§ 47. Vacating and Removal.

The power to remove insubordinate and negligent school officers is sometimes given by statute and may be exercised for proper cause.⁵ The refusal of a trustee to discontinue a proceeding against a local board when ordered to do so by the superintendent whose decision was conclusive, has been declared willful disobedience and proper cause for removal.⁶ And where the directors of a subdistrict were ordered by the board of education to sell the old schoolhouse and site, and purchase a new site, instead of complying with the order, proceeded to build a new schoolhouse on the old site it was held a degree of insubordination which justified their removal.⁷

But the power of removal cannot be exercised against

¹ School District, &c., *v.* Bennett, 52 Ark. 511, 13 S. W. 132.

² State *v.* Stewart, 90 Kan. 778, 135 Pac. 1182.

³ Owens *v.* O'Brien, 78 Va. 116; Smith *v.* Reppard, 69 W. Va. 211, 71 S. E. 115.

⁴ Jewett *v.* Matteson, 148 Ky. 820, 147 S. W. 924.

⁵ Heard *v.* School Directors, 45 Pa. St. 93.

⁶ People *v.* Draper, 63 Hun (N. Y.) 389, 18 N. Y. S. 282.

⁷ State *v.* Lynch, 8 Ohio 347.

an official who refuses to do an act which rests within his own discretion, as where the school directors refuse to erect a new school building, the erection of which is within their discretion.¹

The failure of a school board to organize because no one can get a majority vote for president is neglect of duty and just cause for removal,² and so is the failure of a board to appoint the usual and necessary number of teachers because they cannot agree as to the salary.³

Although a school board may be removed for improper acts or omissions in their official capacity, they may not be removed for acts done in an individual capacity and not as a board formally convened.⁴ And an officer duly elected, and who has entered into the duties of his office, cannot be removed from, nor deprived of his office without notice and hearing before a proper tribunal,⁵ although where an office is appointive, or where the power of removal is given by statute, an officer may be removed at any time without notice or hearing.⁶

Failure of a school officer to perform ministerial or clerical duties in entering upon the records the election

¹ *In re Derry, &c.*, 1 Leg. Gaz. (Pa.) 59; *Kline v. School Directors*, 2 Lanc. L. Rev. (Pa.) 321.

² *In re Kline, &c.*, 3 Pa. Co. Ct. 546.

³ *Appeal of School Directors, &c.*, 121 Pa. St. 293, 15 Atl. 548.

⁴ *State v. Leonard*, 3 Tenn. Ch. 177.

⁵ *Jacques v. Little*, 51 Kan. 300, 33 Pac. 106; *Field v. Com.*, 32 Pa. St. 478; *Ex parte Hennon*, 38 U. S. 230, 10 L. ed. 138; *Page v. Hardin*, 8 B. Mon. (Ky.) 648; *State v. St. Louis*, 90 Mo. 19; *Willard's App.*, 4 R. I. 601; *Chase v. Hathaway*, 14 Mass. 222; *Dullam v. Willson*, 53 Mich. 392, 19 N. W. 112.

⁶ *State v. Mitchell*, 50 Kan. 289, 33 Pac. 104.

and qualification of one duly elected to the school board will not deprive the one so elected of his office,¹ and a resignation will not be inferred from failure to perform the duties of the office,² nor is the office vacated by an unaccepted resignation.³

It is usually provided by statute that the removal of a school trustee from the county makes his office vacant,⁴ but a school director who temporarily moves out of a district for a few months, with intention of returning, leaving his property within the district, does not thereby vacate his office although his neglect of duties pertaining thereto are penalized by statute. Such officer may abandon his office by resignation, removal from the district, non-user, or neglect of duty, but any of such acts or omissions must be complete, and of a permanent nature, and the circumstances must absolutely indicate the relinquishment of office; otherwise there must be a judicial determination of the vacancy of the office before it can be so considered.⁵

A member of a school board by absence from the State for a period of six months does not thereby vacate his office.⁶ But a school director who removes from the district with intent not to return, thereby vacates his office, and the remaining two members may make a

¹ *McGlone v. Zornes*, 32 Ky. L. Rep. 965, 107 S. W. 329.

² *Giles v. School District, &c.*, 31 N. H. 304.

³ *Townsend v. Trustees, &c.*, 41 N. J. L. 312.

⁴ *Giles v. School District, &c.*, 31 N. H. 304; *Gildersleeve v. Board, &c.*, 17 Abb. Pr. (N. Y.) 201.

⁵ *School District, &c., v. Garrison*, 90 Ark. 335, 119 S. W. 275.

⁶ *Patrick v. Fletcher*, 149 Ky. 193, 148 S. W. 16.

lawful contract without notifying the absent member of the meeting.¹

For misfeasance, that is, the improper doing of an act which might be otherwise done lawfully, the school directors may not be removed from office.²

§ 48. Officers De Facto, De Jure and Intruders.

A public officer, such as a member of a school board,³ may be an officer *de jure*, or an officer *de facto*, or both, or a mere intruder.

An officer *de facto* may be defined as one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law.⁴

A very comprehensive definition of an officer *de facto* has been given as follows: "An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised :

"First, without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be.

¹ *Marr v. School District, &c.*, 107 Ark. 305, 154 S. W. 944.

² *In re Union, &c.*, 12 Pa. Co. Ct. 547.

³ *Ogden v. Raymond*, 22 Conn. 379; *Sanborn v. Neal*, 4 Minn. 126; *Com. v. Morrissey*, 86 Pa. St. 416; *McCoy v. Curtice*, 9 Wend. (N. Y.) 17.

⁴ *King v. Corporation of Bedford Level*, 6 East 356; *Petersilea v. Stone*, 119 Mass. 465; *State v. Carroll*, 38 Conn. 449.

“ Second, under color of a known and valid appointment or election, but where the officer has failed to conform to some precedent requirement or condition, as to take an oath, give a bond or the like.

“ Third, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public.

“ Fourth, under color of an election, or appointment by or pursuant to a public unconstitutional law, before the same is adjudged to be such.”¹

The early cases held that to constitute one an officer *de facto* it was necessary that his claim to office must have been under some form or color of election or appointment. But color of election or appointment is not now considered as an essential element so far as the rights of third persons are concerned.² But it is necessary, in order to constitute one an officer *de facto* and distinguish him from an usurper or a mere intruder, that he hold his office under color of right. This color of right may consist in an election or appointment, or in holding over after the expiration of his term of office, or in acquiescence by the public in the acts of such officer for such a length of time as to raise the presumption of colorable right by election or appointment.³

¹ State v. Carroll, 38 Conn. 449.

² Petersilea v. Stone, 119 Mass. 465; Brown v. Lunt, 37 Me. 423; Cary v. State, 76 Ala. 78.

³ Hamlin v. Kassafer, 15 Oreg. 456, 15 Pac. 778.

Consequently by acquiescence a mere intruder may become an officer *de facto*; so also one elected under an unconstitutional statute to a valid office;¹ or at an election of which proper notice was not given;² or who was not eligible to the office;³ or accepted an incompatible office, and thereby his previously held office was forfeited;⁴ or did not give a bond as prescribed by law;⁵ or when the bond given was defective;⁶ or when his bond was not duly filed;⁷ or when he held over after expiration of his term;⁸ or removed from the district;⁹ or was appointed when he should have been elected.¹⁰ It should be noted however that no one can be an officer either *de jure* or *de facto* if the office which he holds was created by an unconstitutional statute. Such holder of office is a mere usurper.¹¹

The doings of an officer *de facto*, as affecting third persons who have an interest in the thing done, and the public, are valid, and must be respected until he is

¹ *Cole v. Black River Falls*, 57 Wis. 110, 14 N. W. 906; *State v. Carroll*, 38 Conn. 449.

² *Yorty v. Paine*, 62 Wis. 154, 22 N. W. 137.

³ *Farrier v. State*, 48 N. J. L. 613, 7 Atl. 881; *Lockhart v. Troy*, 48 Ala. 579.

⁴ *Woodside v. Wagg*, 71 Me. 207.

⁵ *Gunn v. Tacket*, 67 Ga. 725.

⁶ *Adams v. Tator*, 42 Hun (N. Y.) 384.

⁷ *State v. Dierberger*, 90 Mo. 369, 2 S. W. 286.

⁸ *Petersilea v. Stone*, 119 Mass. 465; *People v. Beach*, 77 Ill. 52; *Morton v. Lee*, 28 Kan. 286; *Wapello County v. Bigham*, 10 Iowa 39.

⁹ *Case v. State*, 69 Ind. 46.

¹⁰ *Chicago, &c., v. Langlade, &c.*, 56 Wis. 614, 14 N. W. 844.

¹¹ *Norton v. Shelby County*, 118 U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121.

ousted from office by *quo warranto*, but the acts of an usurper are wholly void.¹

An officer *de jure* is one who has the lawful right to the office, but who has either been ousted from or never actually taken possession of it. When the officer *de jure* is also the officer *de facto*, the lawful title and possession are united, and no other person can be an officer *de facto* for that office.²

Within the scope of his authority the acts of an officer *de jure* are valid for all purposes. Not so with an officer *de facto*; his acts are only recognized in the law to be valid and effectual so far as they affect the public and third persons. As to these his acts are as valid as if he were an officer *de jure*. The reason of the rule is apparent. It would be as unjust as unreasonable to require every individual doing business with such officer to investigate and determine at his peril the title of such officer. Third persons, from the nature of the case, cannot always investigate such right even so far as to say that the holder of an office has color of title to it by virtue of some appointment or election. If he is seen to be publicly exercising the authorities of the office, and if they find that this exercise is generally acquiesced in, they are entitled to treat him as such officer, and if they deal with him as such, he should not be subjected to the danger of having his acts collaterally attacked.³ It, moreover, is against the policy of

¹ *Plymouth v. Painter*, 17 Conn. 585.

² *Hamlin v. Kassafer*, 15 Oreg. 456, 15 Pac. 778.

³ *Petersilea v. Stone*, 119 Mass. 467; *School District, &c., v. Garrison*, 90 Ark. 335, 119 S. W. 275.

the law to allow a suit between private individuals to determine the title to an office. Such judgment could only bind the parties, and would be of no effect as against the public.

A mere usurper or intruder is one who has intruded upon the office and acts without color of title or right, and whose acts are utterly void.¹

The official acts of a *de facto* county superintendent are valid so long as he is permitted to exercise the functions of that office.² And any school officer acting as such will be presumed to be rightfully in office,³ especially when he is shown to have been acting under color of election;⁴ and evidence that the general reputation in the district is that he is not an officer *de jure* is not admissible.⁵

The acts of a school officer *de facto*, who has a colorable right to office,⁶ are generally valid.⁷ Bonds issued by a *de facto* board of education are valid in the hands of a *bona fide* holder for value,⁸ and a *de facto* school board may make a contract with a teacher that will bind the

¹ Hooper *v.* Goodwin, 48 Me. 80; Tucker *v.* Aiken, 7 N. H. 113; McCraw *v.* Williams, 33 Gratt. 510; Com. *v.* Bush, 131 Ky. 384, 115 S. W. 249.

² State *v.* Blegen, 26 S. D. 106, 128 N. W. 488.

³ Burgess *v.* Pue, 2 Gill (Md.) 254; State *v.* Williams, 27 Vt. 755.

⁴ Ring *v.* Grout, 7 Wend. (N. Y.) 341.

⁵ *Ibid.*

⁶ Hand *v.* Deady, 79 Hun (N. Y.) 75, 29 N. Y. S. 633; Washington, &c., *v.* School, &c., 77 Md. 283, 260 Atl. 115.

⁷ School District, &c., *v.* Cowee, 9 Neb. 53, 2 N. W. 235; Goodwin *v.* Perkins, 39 Vt. 598.

⁸ National, &c., *v.* Board, &c., 159 U. S. 262, 40 L. ed. 147, 15 S. Ct. 1041.

district.¹ And any contract which a board of education has power to make, they have power to ratify when made by officers *de facto* who have acted under an invalid law.²

The right of *de facto* school directors to perform the duties of their office can be questioned only by the State in a proceeding brought for that purpose at the instance of the attorney general or county attorney,³ and a treasurer cannot refuse to pay warrants drawn by a *de facto* school board on the ground that they hold office illegally.⁴ And where there are two school boards each claiming the office, and the board *de jure* notifies persons not to contract with the other board, those who do so contract cannot recover from the district.⁵

The right of suffrage and the capacity to hold office, unless otherwise expressly declared, must coexist. Therefore, unless so provided by statute, an alien or one who is not a qualified elector is ineligible to hold an elective office. This rule of law is founded upon the acknowledged principle which lies at the very foundation of all independent popular governments, — that the government is instituted by the citizens for their liberty and protection, and that it is to be administered, and its powers and functions exercised by them and

¹ *School, &c., v. Ziegler*, 1 Ind. App. 138, 27 N. E. 303; *DeWolf v. Watterson*, 35 Hun (N. Y.) 111.

² *Dubuque, &c., v. Dubuque*, 13 Iowa 555.

³ *Franklin, &c., v. Board, &c.*, 75 Mo. 408; *Jacques v. Litle*, 51 Kan. 300, 33 Pac. 106.

⁴ *Miahle v. Fournet*, 13 La. An. 607.

⁵ *Genessee, &c., v. McDonald*, 98 Pa. St. 444; *State v. Blossom*, 19 Nev. 312, 10 Pac. 430; *White v. Archibald*, 8 Atl. (Pa.) 443.

through their agencies. And this is the rule although constitution and statutes do not expressly so ordain.¹

§ 49. Usurpation of Duties.

Where the mayor and city council usurp the duties of the school directors, the right of the alleged usurpation must be settled by *quo warranto* or other action but cannot be tried by *mandamus*.² And a superintendent of the public schools is entitled to an injunction to restrain persons usurping an office from removing him from his position to which he is legally entitled, or in other ways interfering with him in the discharge of his duties.³

Where a school board of six members divide themselves into two equal factions, and each attempts to organize and usurp the powers of the board, no organization is effected, and the entire board may be removed.⁴

§ 50. Meetings of School Directors.

The authority of school trustees is limited to the legislative authority conferred,⁵ and therefore they can perform only such functions as are prescribed by statute, or are fairly implied therefrom. Consequently a vote taken at a meeting held outside the district is void.⁶

¹ *Scott v. Strobach*, 49 Ala. 477; *State v. Murray*, 28 Wis. 96; *State v. Trumpf*, 50 Wis. 103, 5 N. W. 876.

² *Fowler v. Brooks*, 188 Mass. 64, 74 N. E. 291.

³ *Lefevre v. Besterling*, 137 S. W. (Tex.) 1159.

⁴ *In re Butler, &c.*, 158 Pa. St. 159, 27 Atl. 849.

⁵ *State v. McBride*, 31 Nev. 57, 99 Pac. 705.

⁶ *State v. Kessler*, 136 Mo. App. 236, 117 S. W. 85.

But where all members of a school board are present, they may take official action, though the meeting is not formally called.¹

Where the statute requires the secretary of a school committee to keep a permanent record book in which all votes, orders, and proceedings of the committee shall be recorded, it is a mere direction to the secretary and does not have the effect of rendering invalid such regulations adopted by the committee as are not recorded therein.² And a rule of a school board is waived when such board take unanimous action inconsistent therewith.³

§ 51. Notice of Meetings.

Even though there is a general understanding between the members of a school board that in the absence of one member the others could act without prior notice to the absent member, a contract entered into at a meeting where one member was absent and had had no notice, is void.⁴ And the fact that a member of a school board has said that he is opposed to certain action, does not make it unnecessary to give him notice of a meeting upon which such action is to be officially taken.⁵

Where an honest and reasonable effort has been made to notify an absent school director of a meeting of the

¹ *Butler v. Joint School District, &c.*, 155 Wis. 626, 145 N. W. 180. See also, §§ 43, 44, *supra*.

² *Alvord v. Chester*, 180 Mass. 20, 61 N. E. 263.

³ *Weatherly v. Chattanooga*, 48 S. W. (Tenn.) 136.

⁴ *School District v. Castell*, 105 Ark. 106, 150 S. W. 407.

⁵ *Scott v. Pendley*, 114 Ky. 606, 71 S. W. 647.

board, which effort was futile, the remaining two members of the board may lawfully act.¹ Nor will the fact that the statute provides that no official business shall be transacted by a board of school directors, except at a regular or special meeting, invalidate action taken by them when all members are present even without notice of a meeting.² And if all school directors are present at a meeting and participate therein, it is immaterial that they had no notice of the meeting.³

§ 52. Records.

A school board should keep a written record of its proceedings.⁴ But it is not necessary that every act in regard to the management of each school be authorized or confirmed by formal vote, or that all rules and orders required for the discipline and good conduct of the schools shall be matter of record with the committee. It would be practically impossible sufficiently to provide for all matters by a system of rules, however carefully prepared and promulgated. Much must necessarily be left to the individual members of the committee, and to teachers of the several schools; ⁵ so where notice of the discontinuance of a school is given to the persons interested its validity is not affected by the omission

¹ *School Directors v. Sprague*, 78 Ill. App. 390.

² *Lawrence v. Trauer*, 136 Ill. 474, 27 N. E. 197.

³ *School District, &c., v. Allen*, 83 Ark. 491, 104 S. W. 172; *People v. Frost*, 32 Ill. App. 242; *Lee v. Mitchell*, 108 Ark. 1, 156 S. W. 450; *Hanna v. Wright*, 116 Iowa 275, 89 N. W. 1108.

⁴ *Broussard v. Verret*, 43 La. An. 929, 9 So. 905; *Gearhart v. Dixon*, 1 Pa. St. 224.

⁵ *Russell v. Lynnfield*, 116 Mass. 365.

of the trustee at the time of making his order to enter it of record.¹

Although the acts of a board of school directors should be recorded, if not recorded they are so far valid that those who contract with them cannot repudiate the contract merely because the matter was not recorded.² And where the minutes of a board of education show that a meeting was held pursuant to a rule fixing time and place and defining a quorum, it will be presumed that a meeting was so called and held.³

One who has been clerk of a school board, cannot after the expiration of his term of office, correct the minutes of a meeting of the board as a public officer, nor as such correct his official entries in the public records.⁴

§ 53. Voting.

Where the vote of a town requires the school directors to appoint a superintendent of schools, they may, after electing the superintendent by ballot, reconsider the vote at the same meeting before communicating it to the person appointed, and at another meeting elect another person to fill the position, without any contract arising with the party whose election was reconsidered.⁵

Although the more important duties of the school directors must be delegated by a formal vote, it is not necessary that subordinate matters must be so voted. This would be impracticable. So one who is authorized

¹ *Tufts v. State*, 119 Ind. 232, 21 N. E. 892.

² *School Directors, &c., v. McBride*, 22 Pa. St. 215.

³ *American, &c., v. Board, &c.*, 131 Wis. 220, 110 N. W. 403.

⁴ *Beck v. Board, &c.*, 76 Ohio St. 587, 81 N. E. 1180.

⁵ *Wood v. Cutter*, 138 Mass. 149.

by the school directors to take charge of a school may, without a formal vote of the school directors, employ one to keep order at the door and such contract is binding upon the city.¹

§ 54. Making Contracts.

As members of boards of education and other public officers are guardians of the public welfare, they must allow no transaction growing out of their official position or services to inure to their personal benefit; and from such transactions the law will not imply a contract.² When a contract grows out of and is connected with an illegal act, it will not be enforced.³ Therefore an order by two of the trustees of a school district, one of whom is personally interested in it, and therefore incompetent to act, is void for want of the sanction of a competent majority of the board, whether the interested trustee has acted fairly or not.⁴

And where one of the commissioners of a board of education, when notified of the time and place of the meeting of the board for the purpose of passing on a proposed contract, refused to go on account of the loss he would sustain by closing his place of business, and the agent of the party seeking the contract with the board offered and paid to him two and a half dollars in money to reimburse him for his loss to be thus incurred, telling him at the same time that the payment

¹ *Huse v. Lowell*, 10 Allen (Mass.) 149.

² *Davis v. United States*, 23 Ct. Cl. 329.

³ *Jones v. Surprise*, 64 N. H. 243, 9 Atl. 384; *State v. Cross*, 38 Kan. 696, 17 Pac. 190.

⁴ *Shakespear v. Smith*, 77 Cal. 638, 20 Pac. 294.

was not to influence his decision in any way, and the commissioner attended the meeting and voted for the contract, that transaction renders his vote and consequently the contract invalid.¹ Such action amounts to an unlawful influence which has the effect of bribery so far as to render void any action taken by the aid of such member, and the act is against public policy.

A written contract signed by the trustees of a school district must show that they have signed in their representative capacity; otherwise they will be personally liable, and the district will not be bound. If a trustee merely adds to the signature of his name the words "trustee" or "school director", this appendix is regarded as merely *descriptio personae*, and he binds himself instead of the district he represents. Such words do not in themselves make third persons chargeable with notice of any representative relation of the signer.² So where the written contract for the building of a schoolhouse on its face shows no intent to make it the contract of the district, or that the trustees were acting on behalf of the district, but was signed with the names of the school directors with their description as such they were held individually liable.³ But if in the body of the instrument they are designated as trustees of the public schools of the district, it is the contract of the district.⁴ And if the contract makes no reference to the school

¹ Honaker v. Board, &c., 42 W. Va. 170, 24 S. E. 544.

² Metcalf v. Williams, 104 U. S. 93, 26 L. ed. 667.

³ Sharp v. Smith, 32 Ill. App. 336.

⁴ Mackenzie v. School, &c., 72 Ind. 189; Sanborn v. Neal, 4 Minn. 126; Lyon v. Adamson, 7 Iowa 509.

district being bound, but is signed by two persons with the appendices "president school board", and "secretary school board," the contract reciting "We agree to pay," although the heading contains the name of the State, county and township, it is the contract of the two persons who signed it.¹ Where in the body of an instrument, the obligation created purports to be a personal one; although it is signed by the parties as trustees, the language of the body is controlling, and they are personally liable.²

Where duly appointed officers or agents of a corporation acting within the scope of their authority, execute an instrument in behalf of the corporation, signing their own names and affixing their own seals, such seals are of no effect, and the instrument is the simple contract of the corporation, binding the corporation and not the individuals signing it, where the instrument as a whole shows an intent to act for the corporation, and does not show an intent to create a personal liability.³

• Where school directors, not authorized by vote of the people as required by statute, sign a promissory note with their individual names they are personally liable notwithstanding the note was given for school purposes.⁴ But where a school director signs a note and adds to his signature "Trustee of S. Township" the note is

¹ *Wing v. Glick*, 56 Iowa 473, 9 N. W. 384.

² *Western Publishing House v. Murdick*, 4 S. D. 207, 56 N. W. 120.

³ *Dillon on Munic. Corp.*, 5th ed., § 785; *Regents, &c., v. Detroit, &c.*, 12 Mich. 138; *Blanchard v. Blackstone*, 102 Mass. 343; *Bank, &c., v. Guttschlick*, 14 Pet. (U. S.) 19. But see, *Fullam v. Brookfield*, 9 Allen (Mass.) 1.

⁴ *School Directors v. Miller*, 54 Ill. 338.

that of the township and the trustee is not personally bound.¹

Where school directors contract a debt in excess of the statutory or constitutional debt limit, such debt is valid up to such limit,² especially when fully performed by the contractor.³

The provisions of the statutes must always be complied with in making contracts, otherwise no legal liability is created.⁴ And in order to bind the district by a contract, a school board must act as a board, and not as individual members.⁵

The directors of a school district may enter into a contract for the district, the performance of which will begin after the expiration of the term of office of some of the directors, and such contract may be made by two directors when there are but two on the board.⁶ But a school district has no authority to incur a debt and issue a warrant therefor, payable in the future.⁷ And one dealing with a school board is presumed to have knowledge of the limited authority.⁸

Without authority of statute a school board cannot make a contract for school supplies which provides any other place of payment than the school treasury,

¹ *State v. Helms*, 136 Ind. 122, 35 N. E. 893.

² *People v. Peoria, &c.*, 216 Ill. 221, 74 N. E. 734. But see, *Grady v. Landram*, 111 Ky. 100, 63 S. W. 284.

³ *McGillivray v. Joint School District*, 112 Wis. 354, 88 N. W. 310.

⁴ *Cascade, &c., v. Lewis, &c.*, 43 Pa. St. 318.

⁵ *School District, &c., v. Shelton*, 26 Okla. 229, 109 Pac. 67; *Johnson v. Dye*, 142 Mo. App. 424, 127 S. W. 413.

⁶ *School District, &c., v. Garrison*, 90 Ark. 335, 119 S. W. 275.

⁷ *Markey v. School District, &c.*, 58 Neb. 479, 78 N. W. 932.

⁸ *Thornburgh v. School District, &c.*, 175 Mo. 12, 75 S. W. 81.

nor which contains a provision that necessary attorney's fees be paid by the district.¹

Where the statute makes it the duty of a school board to select the site, adopt the plans, and contract for the building of a schoolhouse, that duty cannot be delegated.² And the approval of the mayor to a contract of a school committee, resting in his discretion, will not be coerced by a *mandamus*.³

Where school directors make an illegal contract, and illegally sign an order in payment therefor, they become individually liable under the contract.⁴

Where the statute fixes a certain time and place for transacting the annual business of a school district, and it is not held on that day, a contract made in pursuance of a vote taken at such meeting on a different day is void, and no action can be maintained against a party who breaks a contract to build a schoolhouse, made in pursuance of such vote.⁵ And a contract made by a majority of the school directors at a meeting held at a time other than that fixed for regular meetings, and of which the minority had no notice is not binding on the district.⁶ But if all members of the board are notified to be present a contract made by the majority is valid,⁷ if authorized at a regular meeting,⁸ and the ab-

¹ Weir Furnace Co. v. Seymour, 99 Iowa 115, 68 N. W. 584.

² Kinney v. Howard, 133 Iowa 94, 110 N. W. 282.

³ McLean v. White, 216 Mass. 62, 102 N. E. 929.

⁴ State Bank, &c., v. Keinberger, 140 Wis. 517, 122 N. W. 1132.

⁵ Fluty v. School District, &c., 49 Ark. 94, 4 S. W. 278.

⁶ School District, &c., v. Bennett, 52 Ark. 511, 13 S. W. 132.

⁷ Wilson v. Waltersville, &c., 46 Conn. 400; People v. Peters, 4 Neb. 254.

⁸ Andrews v. School District, &c., 37 Minn. 96, 33 N. W. 217.

sent member previously authorized, or subsequently gave, his assent.¹

A contract legally made is not rendered invalid because no record is made of the action of the board.² And members of the school board should contract only when duly convened at a board meeting, and sitting in consultation, and a contract signed by them separately without consultation, cannot be enforced, especially when they were induced to sign by false and fraudulent statements.³

A contract with a school district need not be in writing unless the statute requires it.⁴ And where the statute requires that a contract be in writing it is not necessary that the contract be put into writing at the session of the board at which it is made, it being sufficient if it be reduced to writing and signed after the board has adjourned.⁵

Although the statute requires contracts with teachers to be in writing, if a teacher orally contracts with the directors to teach a period of nine months, and after teaching seven months and receiving pay therefor is discharged, the acceptance by the district of such part

¹ *People v. Peters*, 4 Neb. 254. But see, *Pennsylvania, &c., v. Board, &c.*, 20 W. Va. 360.

² *Bellmeyer v. Marshalltown*, 44 Iowa, 564; *Page v. Township, &c.*, 59 Mo. 264; *School Directors, &c., v. McBride*, 22 Pa. St. 215.

³ *Mills v. Collins*, 67 Iowa 164, 25 N. W. 109.

⁴ *Jackson, &c., v. Shera*, 8 Ind. App. 330, 35 N. E. 842.

⁵ *Faulk v. McCartney*, 42 Kan. 695, 22 Pac. 712; *Milford v. Zeigler*, 1 Ind. App. 138, 27 N. E. 303; *Holloway v. School District &c.*, 62 Mich. 153, 28 N. W. 764; *Armstrong v. School District, &c.*, 28 Mo. App. 169; *Dolan v. School District*, 80 Wis. 155, 49 N. W. 960.

performance will be a ratification of the contract, and the district will be liable for the whole amount.¹ But an oral contract with a teacher, made without authority to make even a written contract, will not be ratified by a part performance when the board from the beginning repudiated the entire contract, having so voted, and instructed the secretary to so notify the teacher.²

§ 55. Bids and Bidders.

Before entering into a contract with a person who agrees to furnish supplies or erect a school building, it is not necessary for the school officials to advertise for bids, unless they are required by statute to do so.³ And where proposals are advertised for, in compliance with the statute which does not require that a contract be awarded to the lowest bidder, and the school board advertises that it reserves the right to reject any or all bids, in the absence of fraud on the part of the board an injunction will not lie to prevent them awarding the contract to one who was not the lowest bidder.⁴ If the statute requires that a contract be let to the lowest responsible bidder, and that bonds with sufficient sureties shall be required, the school directors have no authority to contract with one who is not the lowest bidder, and who does not furnish the required bond. Acceptance of such bid does not constitute a contract.⁵

¹ *Cook v. North McGregor*, 40 Iowa 444.

² *Herrington v. Liston*, 47 Iowa 11.

³ *Hughes v. School Directors*, 8 Luz. Leg. Reg. (Pa.) 284.

⁴ *Chandler v. Board, &c.*, 104 Mich. 292, 62 N. W. 370.

⁵ *Weitz v. Independent, &c.*, 79 Iowa 423, 44 N. W. 696.

Although it is a rule of a school board to let contracts to lowest bidders, in the absence of a statute so requiring, they are not obliged to do so, and where their advertisement states that they reserve the right to reject any or all bids, one making the lowest bid has no right of action against the board who rejects the bid and awards the contract to another, even if the rejection is from caprice or favoritism.¹ But where a board of awarding officers act contrary to law, or fraudulently, the rights of the lowest bidder will be protected.² And where there is but one bidder on a contract, he cannot claim that he was the lowest bidder.³

The provision that a contract will be awarded to the "lowest responsible bidder", does not refer alone to pecuniary responsibility. Such responsibility to be considered covers judgment, skill, ability, integrity, capacity to perform and financial responsibility.⁴ Therefore one who had previously defrauded the city may be held objectionable.⁵

Whether a bidder on a contract is responsible is a matter to be decided by the body authorized to accept bids, with *bona fide* discretion and after investigation.⁶ And where the statute requires a board of education to

¹ *Anderson v. Board, &c.*, 122 Mo. 61, 27 S. W. 610.

² *Baltimore v. Keyser*, 72 Md. 106, 19 Atl. 706; *State v. York, &c.*, 13 Neb. 57, 12 N. W. 816.

³ *People v. King's, &c.*, 42 Hun (N. Y.) 456.

⁴ *Kelly v. Chicago*, 62 Ill. 279; *Hoole v. Kinkead*, 16 Nev. 217; *Interstate, &c., v. Philadelphia*, 164 Pa. St. 477, 30 Atl. 383; *People v. Dorsheimer*, 55 How. Pr. (N. Y.) 118; *Clapton v. Taylor*, 49 Mo. App. 117.

⁵ *Douglass v. Com.*, 108 Pa. St. 559.

⁶ *Schwitzer v. Board, &c.*, 79 N. J. L. 342, 75 Atl. 447.

award a contract to the lowest responsible bidder, the board cannot decide adversely as to the responsibility of such bidder without giving him notice and opportunity to be heard.¹

§ 56. Implied Contracts.

Where a board of education, by statute made a body corporate, appoints a committee to contract for erection of a schoolhouse, which is done and the building accepted by the board, there is an implied contract to pay for the building, and it cannot be avoided merely because the appointment of the committee was not under seal.² But where the school directors build a schoolhouse without a vote of the electors of their district, their acceptance of the building and conducting of a school therein does not make their act a legal one nor create an implied contract to pay, and the taxpayers are not bound to pay a tax levied for the payment therefor.³

The receipt and use of goods unlawfully purchased by school officials, does not create an implied contract to pay by which the district is bound. As, where the statute provides that school directors may appropriate to the purchase of libraries and apparatus any surplus funds after all necessary school expenses are paid, they having no authority to purchase such articles on credit, such purchases are void. Even if the goods are received and used the district is not bound to pay for

¹ *Jacobson v. Board, &c.*, 64 Atl. (N. J.) 609.

² *Board, &c., v. Greenbaum*, 39 Ill. 609.

³ *School Directors, &c., v. Fogleman*, 76 Ill. 189.

them, and the only remedy of the seller is to claim the property itself.¹

However, if a schoolhouse is built under a contract repudiated by the district after the district had agreed to build a schoolhouse, raised money for that purpose, and chosen a building committee who with the inhabitants see the work progress without objection, the district is bound by an implied contract to pay the reasonable value of the building.² But where a building committee is illegally chosen, as it would be if the district meetings were illegally called, their superintending of the erection of the building does not bind the district nor raise an implied contract to pay.³

Where a district and its legally existing officers, entitled to interfere, stand by in silence while regular service is being rendered for the district by one having the color of right, and the service is such as the district would have been bound to pay for, the district is liable on an implied contract, and it is no defense that the officer contracting is merely an officer *de facto* and not an officer *de jure*.⁴

Where the statute requires that such contracts as employing a janitor shall be in writing, and a parol contract is made for such services, no recovery can be had on an implied contract.⁵

¹ Clark *v.* School Directors, 78 Ill. 474; Andrews *v.* Curtis, 2 Tex. Civ. App. 678, 22 S. W. 72; Honey Creek, &c., *v.* Barnes, 119 Ind. 213, 21 N. E. 747.

² Morris *v.* School District, &c., 12 Me. 293.

³ Jordan *v.* School District, &c., 38 Me. 164.

⁴ Rowell *v.* School District, 59 Vt. 658, 10 Atl. 754.

⁵ Taylor *v.* School District, &c., 60 Mo. App. 372.

§ 57. Modification of Contracts.

Where the statute requires contracts of the school board to be in writing, an oral modification of such contract by the president of the board is of no effect.¹ Nor has the president of a board any special right to modify an existing contract on behalf of the board. Such right exists only when given by the board or by statute, and such act is valid only when approved by the board.² A provision inserted by the president of the board of directors, in a written contract, without the authority of the board, is not binding upon the board or district.³

Where a school board in pursuance of a vote of the district authorizing them to erect a schoolhouse, the cost not to exceed a specified amount, lets a contract for the erection of a building for a lesser amount, they may, without further grant of authority contract to expend more money in connection therewith up to the specified amount voted by the district.⁴

§ 58. Ratification of Contracts.

Authority to do an act is a condition precedent to ratification of the act, therefore a school committee cannot ratify a purchase which they have no authority to make.⁵ And where a contract is made by a board without authority it is void and incapable of ratification

¹ *Broussard v. Verret*, 43 La. An. 929, 9 So. 905.

² *State v. Tiedemann*, 69 Mo. 515.

³ *Roland v. Reading, &c.*, 161 Pa. St. 102, 28 Atl. 995.

⁴ *Edinburgh, &c., v. Mitchell*, 1 S. D. 593, 48 N. W. 131.

⁵ *Glidden, &c., v. School District, &c.*, 143 Wis. 617, 128 N. W. 285.

by the voters of a school district except upon the conditions primarily necessary to a valid contract.¹ If the district might have authorized the contract in the first instance, it may ratify such contracts as are merely not made in conformity with law.²

And a ratification may be by accepting benefits,³ but not where the acceptance cannot well be avoided,⁴ nor where there was no opportunity for the district to reject the benefits,⁵ nor where they had no knowledge of the price to be charged, or amount involved.⁶

Although a board of directors exceed its powers in making a contract, its action may be ratified by the electors voting to authorize them to settle a disputed claim growing out of it.⁷ But where the contract sued on is declared the contract of the directors personally, the district cannot ratify it as that would make a contract other than the one declared on.⁸ And a contract for building a schoolhouse, which is void as

¹ *Markey v. School District, &c.*, 58 Neb. 479, 78 N. W. 932; *Taylor v. Wayne, &c.*, 25 Iowa 447; *Brown v. School District, &c.*, 64 N. H. 303, 10 Atl. 119.

² *Board v. Carolan*, 182 Ill. 119, 55 N. E. 58; *Trainer v. Wolfe*, 140 Pa. St. 279, 21 Atl. 391; *McGillivray v. School District, &c.*, 112 Wis. 354, 88 N. W. 210.

³ *Andrews v. School District, &c.*, 37 Minn. 96, 33 N. W. 217; *Bellows v. District, &c.*, 70 Iowa 320, 30 N. W. 582; *Johnson v. School, &c.*, 117 Iowa 319, 90 N. W. 713; *Jones v. School District, &c.*, 110 Mich. 363, 68 N. W. 222.

⁴ *Davis v. School District, &c.*, 24 Me. 349.

⁵ *Young v. Board, &c.*, 54 Minn. 385, 55 N. W. 1112.

⁶ *Kane v. School District, &c.*, 52 Wis. 502, 9 N. W. 459; *Wilson v. School District, &c.*, 32 N. H. 118.

⁷ *Everts v. District, &c.*, 77 Iowa 37, 41 N. W. 478.

⁸ *Western Pub. House v. District, &c.*, 84 Iowa 101, 50 N. W. 551.

not made by a lawful number of directors, may be ratified by such a number of the board as the law requires to make the original contract or by the school district.¹ But the use of a schoolhouse by a district is not a ratification of unauthorized repairs upon it.²

It is competent for a board of education to legalize and confirm acts of *de facto* officers acting under a school law which has been declared invalid, if the ratifying officers themselves have authority to perform such acts. If a corporation ratify an unauthorized act by an agent, then, as in the case of natural persons, the ratification is equal to a prior authority; and an act done before may be adopted after the incorporation, so as to be equally binding and conclusive. As a natural person may adopt and take the benefit of an act in relation to property in which at the time of its occurrence he had no interest whatever, but in which he subsequently acquires an interest, so may a corporation on contracts made prior to its existence act in ratification.³ But a subsequent board of directors cannot ratify an illegal act of a preceding board;⁴ and unauthorized expenditures in the construction of a schoolhouse are not ratified by the taking possession and use of it, so as to make the district liable therefor.⁵ But a board of directors, by acts in respect thereto, may

¹ *Sullivan v. School District, &c.*, 39 Kan. 347, 18 Pac. 287; *School District, &c., v. Sullivan*, 48 Kan. 624, 29 Pac. 1141.

² *Davis v. School District, &c.*, 24 Me. 349.

³ *Dubuque, &c., v. City of Dubuque*, 13 Iowa 555; *Goody v. Colchester, &c.*, 15 Eng. L. & E. 596.

⁴ *Glidden v. Hopkins*, 47 Ill. 525.

⁵ *Turney v. Bridgeport*, 55 Conn. 412, 12 Atl. 520.

ratify a contract informally entered into and which they have power to make.¹

Where the inhabitants of a district having voted to build a schoolhouse and appointed a committee for that purpose, the committee made a contract with an individual to build the house ; subsequently the district voted to rescind their vote relative to the building of a house, and appointed a committee to notify the contractor of such vote being passed, and to forbid him from proceeding to execute the contract ; the committee gave the contractor notice accordingly, and he thereupon notified the committee that he should abandon the contract unless they became personally responsible to him ; the committee then made their bond to the contractor by which they bound themselves individually to pay for the house, and the contractor proceeded and built the house according to his contract, and the committee paid him therefor out of their own funds. In an action by the committee against the district for the money so paid it was held that the plaintiffs were not entitled to recover, although the prudential committee of the district had caused the house so built to be used for the purposes of a school for the district, such occupancy and use did not constitute a ratification.² But where a district appointed a committee of three to act in building a schoolhouse, one declining to participate the other two performed the work, it was held that the subsequent use and occupancy constituted a ratification of the acts of the

¹ *Stevenson v. District, &c.*, 35 Iowa 462.

² *Hayward v. School District, &c.*, 2 Cush. (Mass.) 419.

two members of the committee.¹ And an unauthorized act in spending money in excess of an authorized amount may be ratified by a district at a district meeting.²

Where the statute provides that certain contracts with a school district can be legally made only when authorized by vote of the electors of the district, a contract not so made under which goods are furnished and used will not be ratified by such use of the goods.³ But the use for six years, of supplies furnished a school district on an invalid contract, with full knowledge of the facts, and with no offer to return such supplies until sued for the purchase price, is a ratification of the contract.⁴

When a contract is rendered invalid by the fact that no legal notice was given of the directors meeting at which the contract was made, the contract being one within scope of the authority of the school directors, was subject to ratification at a meeting legally held.⁵

§ 59. Acts Ultra Vires.

If a school board exceeds its authority by contracting for an expenditure greater than that authorized, such act is *ultra vires*.⁶ And a school board cannot bind the district by drawing, accepting and issuing orders

¹ Fisher v. School District, &c., 4 Cush. (Mass.) 494.

² Sanborn v. School District, &c., 12 Minn. 17.

³ First Nat'l Bk. v. Whisenhunt, 94 Ark. 583, 127 S. W. 968.

⁴ Richards v. School, &c., 132 Iowa 612, 109 N. W. 1093.

⁵ School District v. Goodwin, 81 Ark. 143, 98 S. W. 696.

⁶ Perkins v. Newark, &c., 161 Fed. 767; Rockland County v. Grear, 57 Misc. Rep. (N. Y.) 472.

against a proposed building fund which, although duly voted, has not yet been raised.¹ Nor can the board bind the district in excess of the amount they have voted.²

Subject to restrictions imposed by statute, it is competent for the qualified electors of a district, when lawfully assembled, to decide upon what sort of a school-house should be built, and also the extent of the expenditure thereupon; and having done so, that decision cannot legally be interfered with by the school board. If in the opinion of the board, changes or an increased expenditure be deemed advisable, a meeting of the electors should be called, and their direction in the matter obtained. Where the board, without authority given by the electors, or by statute, contract a debt for which they have no authority, a recovery cannot be had against the district.³

§ 60. Duties and Liability of Treasurer.

It is usually the duty of a treasurer of a school board to hold all moneys of the district, and to pay them out only upon vouchers signed by the proper officers. He is usually required in his bond to not merely exercise due care and diligence in the discharge of his duty, but to perform it absolutely, without conditions or

¹ *School District v. Stough*, 4 Neb. 357; *Davis v. Board, &c.*, 38 W. Va. 382, 18 S. E. 588.

² *Capital Bank v. School District, &c.*, 63 Fed. 938; *Capital Bank v. School District, &c.*, 1 N. D. 479, 48 N. W. 363; *Turney v. Bridgeport*, 55 Conn. 412, 12 Atl. 520; *Wilson v. School District, &c.*, 32 N. H. 118; *School District, &c., v. Western Tube Co.*, 5 Wyo. 185, 38 Pac. 922.

³ *Gehling v. School District, &c.*, 10 Neb. 239, 4 N. W. 1023.

exceptions, and he will not be relieved from his contract by showing any degree of diligence or care which falls short of absolute compliance with the terms of his contract as shown in his bond.¹ Against a bond to this effect a treasurer is liable for money stolen from him, and the directors of a school district have no power, in absence of a consideration, to release him from liability on any debt which he may owe to the district.² And it has been decided that depositing funds in a solvent bank even by the advice of State and County Superintendents and County Board, if loss results, is no defense to a depositor.³

There is some conflict in the decisions as to the responsibility of public officers and their sureties for the loss of public moneys without negligence or fault on the part of the officers. While in some cases the rule of responsibility of bailees for hire has been applied, exonerating officers who have been found guiltless of negligence, this measure of responsibility is not generally accepted. The great weight of authority in this country will sustain the general propositions, with respect to the liability of such officers and their sureties for the loss of public moneys, that where the statute, in direct terms or from its general tenor, imposes the duty to pay over public moneys received and held

¹ *U. S. v. Prescott*, 3 How. (U. S.) 578; *Muzzy v. Shattick, et al.*, 1 Denio (N. Y.) 233; *Com. v. Comly*, 3 Pa. St. 372; *State v. Harper*, 6 Ohio St. 607.

² *District, &c., v. Morton*, 37 Iowa 550; *Bluff Creek v. Hardinbrook, et al.*, 40 Iowa 130; *Board, &c., v. Jewell*, 44 Minn. 427, 46 N. W. 914.

³ *Inglis v. State*, 61 Ind. 212.

as such, and no condition limiting that obligation is discoverable in the statute, the obligation thus imposed upon and assumed by the officer will be deemed to be absolute, and the plea that the money has been stolen or lost without his fault does not constitute a defense to an action for its recovery ; that the rule of responsibility of bailees for hire is not applicable in such cases ; that where the condition of the bond is, that the officer will faithfully discharge the duties of the office, and where the statute, as before stated, imposes the duty of payment or accountability for the money, without condition, the obligors in the bonds are subject to the same degree of responsibility ; and that the reasons upon which these propositions rest are to be found both in the unqualified terms of the contract, and in consideration of public policy.¹ And even where the treasurer of a school district without fault on his part, deposits school funds in a bank which becomes insolvent, he becomes liable for the amount on his official bond.²

A treasurer of a school district is also responsible for his own negligence as where a note made payable

¹ *U. S. v. Dashiell*, 4 Wall. (U. S.) 182 ; *Hancock v. Hazzard*, 12 Cush. (Mass.) 112 ; *New Providence v. McEachron*, 35 N. J. L. 528 ; *Com. v. Comly*, 3 Pa. St. 372 ; *Thompson v. Board*, 30 Ill. 99 ; *Morbeck v. State*, 28 Ind. 86 ; *Ward v. School District*, 10 Neb. 293, 4 N. W. 1001 ; *Wilson v. Wichita Co.*, 67 Tex. 647, 4 S. W. 67 ; *State v. Nevin*, 19 Nev. 162, 7 Pac. 650 ; *State v. Moore*, 74 Mo. 413 ; *Commissioners v. Lineberger*, 3 Mont. 231 ; *Board, &c., v. Jewell*, 44 Minn. 427, 46 N. W. 914 ; *Bluff Creek v. Hardinbrook, et al.*, 40 Iowa 130.

² *State v. Powell*, 67 Mo. 395 ; *Ward v. School District*, 10 Neb. 293, 4 N. W. 1001.

to the school fund is not presented by the township treasurer to the maker thereof within the time fixed by law, and the sureties are released, the treasurer becomes liable on his bond for the amount if the maker fails to pay.¹

§ 61. Employing Counsel.

Where the statute authorizes a school board or officer to employ counsel in suits brought by or against the district, it does not thereby authorize such employment in a case of appeal from the decision of a board of directors to a County or State Superintendent.²

Without vote of the district to that effect, and in absence of a statute so authorizing, an officer of a school district has no authority to employ counsel in the name of the district to defend a suit against an officer of the district in which the district may be interested. And the fact that the officers of the district, and the voters of the district generally, knew of the pendency and progress of the suit has no legal tendency to show any acquiescence in, or adoption of, the employment of the counsel.³

But it has been held that school funds may be used by school directors in the employment of an attorney to aid in preserving and protecting school rights.⁴

¹ *House v. Trustees, &c.*, 83 Ill. 368.

² *Templin v. District, &c.*, 36 Iowa 411.

³ *Harrington v. School District, &c.*, 30 Vt. 155.

⁴ *Taylor v. Matthews*, 10 Ga. App. 852, 75 S. E. 166.

CHAPTER V

OF SCHOOL TEACHERS

§ 62. Duties of Teachers.

A school teacher, or schoolmaster, is one employed in teaching a school,¹ and a teacher's duties are to teach pupils what has been undertaken, having a special care over their morals.

The acquiring of learning is not the only object of our public schools. To become good citizens, children must be taught self-restraint, obedience and other virtues. Free political institutions are possible only where the great body of the people are moral, intelligent and habituated to self-control and to obedience to lawful authority. The permanency of such institutions depends largely upon the efficient instruction and training of children in these virtues. It is to secure this permanency that the State provides schools and teachers. School teachers, therefore, have important duties and functions. Much depends on their ability, skill and faithfulness. They must train, as well as instruct, their pupils.²

¹ Bouv. L. Dict.

² *Patterson v. Nutter*, 78 Me. 509, 7 Atl. 273.

The duty of a teacher to instruct the pupils in his school is founded on his contract with the school directors, and, there being no privity of contract between the parents of pupils sent to a public school and the teacher, a teacher of such school is not liable to any action by a parent for refusing to instruct his children.¹

To facilitate the performance of the duties of teachers, reasonable rules may be made by the school authorities; and the rule of a board of education that the teachers and other school employees shall reside within the city and county during their term of employment is a reasonable one.²

Where the statute requires that a teacher shall make a report of text-books used, attendance of pupils, branches taught or other details, to the superintending committee, lawful payment for the services of the teacher cannot be made until such report is made.³ And the school committee have no power to waive the rendering of a report that is absolutely required under the statute.⁴ But reports for the time sued for need not be made when there is nothing to report for the reason that during that time the school was closed by the directors.⁵

¹ *Spear v. Cummings*, 23 Pick. (Mass.) 224.

² *Stuart v. Board, &c.*, 161 Cal. 210, 118 Pac. 712.

³ *Moultonborough v. Tuttle*, 26 N. H. 470; *School Commissioners v. Adams*, 43 Md. 349; *School Directors v. First National Bank*, 3 Ill. App. 349; *Owen v. Hay*, 107 Ind. 351, 8 N. E. 220. But see, *Crosby v. School District, &c.*, 35 Vt. 623; *Scott v. School District*, 46 Vt. 452.

⁴ *Jewell v. Abington*, 2 Allen (Mass.) 592.

⁵ *Rudy v. School District, &c.*, 30 Mo. App. 113.

§ 63. Qualifications. — Certificates.

In nearly all States a teacher in a public school before entering upon the duties as a public school teacher must obtain from the proper official a certificate of qualification to perform such duties;¹ and where the statute makes this requirement it is mandatory and cannot be waived.² If the statute does not require the teacher's certificate to state upon its face that an examination was had, or what it consisted of, it is sufficient for the certificate to state that the person to whom it is issued is qualified to teach the branches enumerated.³ Where no form is prescribed in the statute, it is sufficient for the proper official to certify that the party was examined and approved by him on a given day.⁴

There is no legal distinction between the granting of a license to teach and the act of issuing a certificate of that fact. The terms are convertible, and the "licensing" implies the issuing to an applicant of a written permission to teach in the public schools.⁵

Where the original certificate expires by statutory limitation, no second examination of a teacher is necessary before the granting of a renewal certificate.⁶ And even where there is a statutory limitation on a teacher's certificate which requires the further ap-

¹ *Stanhope v. School Directors*, 42 Ill. App. 570.

² *Kuenster v. Board, &c.*, 134 Ill. 165, 24 N. E. 609; *Welch v. Brown*, 30 Vt. 586.

³ *Union, &c., v. Sterricker*, 86 Ill. 595.

⁴ *Wells v. School District, &c.*, 41 Vt. 354.

⁵ *Elmore v. Overton*, 104 Ind. 548, 4 N. E. 197.

⁶ *Doyle v. School Directors*, 36 Ill. App. 653.

proval of the proper official to be endorsed thereon, it has been held that an oral approval and declaration of competency of the teacher on part of the proper official is a sufficient compliance with the spirit of the law.¹

The certificate of a school teacher is in the nature of a commission and cannot be attacked collaterally, especially in absence of fraud.² And where the board of examiners arbitrarily refuse to grant a certificate to a teacher, a *mandamus* will lie to compel such granting as a ministerial act, but where the board has reasonable grounds for refusing such certificate its discretion will not be controlled.³

If a teacher holds a valid certificate at the time of making a valid contract to teach and after entering upon the duties of teaching the certificate expires, recovery may be had on the contract for services performed, both before and after the expiration of the certificate.⁴ And if a teacher has not the necessary certificate at the time of making a contract to teach, it is sufficient if he procures it before entering upon his duties, unless the statute makes the holding of such certificate a condition precedent to the right to make such contract.⁵ And it has been held that

¹ Barnhart v. Bodenhammer, 31 Mo. 319.

² Union, &c., v. Sterrick, 86 Ill. 595; State v. Grosvenor, 19 Neb. 494, 27 N. W. 728; Blanchard v. School District, 29 Vt. 433.

³ Flynn v. Barnes, 156 Ky. 498, 161 S. W. 523.

⁴ Holman v. School District, &c., 34 Vt. 270.

⁵ Pollard v. School District, &c., 65 Ill. App. 104; Crabb v. School District, &c., 93 Mo. App. 254; Youmans v. Board, &c., 13 Ohio Cir. Ct. 207. *Contra*, by statute: McCloskey v. School Dis-

even where the statute provides that any contract for teaching school shall be null and void if the teacher fails to obtain a certificate of qualification before the commencement of school, the conducting of the school by the teacher with the consent and approbation of the prudential committee, after the teacher had obtained a certificate of qualification, was equivalent to making a new contract to commence then upon the same terms as the original contract.¹

The production of a certificate of qualification is a prerequisite to legal employment, and therefore, if the proper officers wantonly refuse to examine the applicant, he has no authority to teach and recover compensation for his services without the required certificate, and a school warrant issued to an unlicensed teacher is invalid. If a town wishes to avail itself of the want of the required certificate as a defense, it has the burden to show the want of such certificate.²

A certificate of qualification is held to be *prima facie* evidence of that qualification; ³ therefore the owner of a certificate is not subject to attack in an action for compensation for services as a school teacher,⁴ unless it be on the grounds of fraud or collusion.⁵

trict, &c., 134 Mich. 235, 96 N. W. 18; O'Connor v. Francis, 42 N. Y. App. Div. 375, 59 N. Y. S. 28.

¹ Scott v. School District, &c., 46 Vt. 452; Smith v. School District, 69 Mich. 589, 37 N. W. 567. But see, Butler v. Haines, 79 Ind. 575.

² Rolfe v. Cooper, 20 Me. 154.

³ Neville v. School Directors, 36 Ill. 71; School Directors v. Reddick, 77 Ill. 628; Barngrover v. Maack, 46 Mo. App. 407; Blanchard v. School District, 29 Vt. 433.

⁴ Doyle v. School Directors, 36 Ill. App. 653.

⁵ Kimball v. School District, 23 Wash. 520, 63 Pac. 213.

A teacher's certificate of qualification, legally obtained, is *prima facie* evidence of qualification to perform the duties of a teacher. The law does not require the highest grade of talent or other qualifications in a teacher, but only fair average ability, and the usual application to the discharge of duties, in order that the contract be fulfilled. And if the directors dismiss a teacher for incompetency or neglect of duty, it devolves upon them to prove the charge.¹

A school officer is never liable for a mistake in judgment, but will be liable for willfully-wrong and malicious acts, for example, in the wrongful withholding of a certificate,² or for the wrongful revocation of a certificate.³ In all acts of school officers malice must be shown or an action will not lie, it being not sufficient that the mistake be merely an erroneous act; but, where the statute requires that the teacher shall be summoned for examination upon preferred charges before his license may be revoked, the revocation without such notice will be actionable.⁴

An unlicensed teacher generally cannot recover for services rendered under a contract for employment in a public school as a teacher inasmuch as such contracts are generally void.⁵ But the authority

¹ *Neville v. School Directors*, 77 Ill. 628.

² *Elmore v. Overton*, 104 Ind. 548, 4 N. E. 197.

³ *Lee v. Huff*, 61 Ark. 494, 33 S. W. 846.

⁴ *Lee v. Huff*, 61 Ark. 494, 33 S. W. 846.

⁵ *Wells v. People*, 71 Ill. 532; *Butler v. Haines*, 79 Ind. 575; *Blandon v. Moses*, 29 Hun (N. Y.) 606. The contract being void,

of an unlicensed teacher is not to be questioned by pupils or parents.¹

If a judgment is recovered against a school district in favor of an unlicensed teacher for compensation for services as a teacher, the payment thereof may be restrained by injunction at the suit of any person interested as a taxpayer.² But a County Superintendent has no power as such to sue out an injunction for this purpose.³ It has been held, however, that the employment of an unqualified teacher is a necessity and that the school board is authorized to employ one who has not a proper certificate, if the board is satisfied that the teacher is otherwise qualified, and to pay such teacher out of the money belonging to the district.⁴

An action by a school teacher for wages claimed to be due, may be maintained only when the teacher shows that he is licensed to teach as provided by law.⁵ And a teacher who accepts a license to teach does so with the implied acceptance of all conditions imposed by statute, and the most that a teacher can ask upon a revocation of a license is that the proceedings shall

no recovery can be had thereon; *Stevenson v. School, &c.*, 87 Ill. 255; *Putnam v. Irvington*, 69 Ind. 80; *Brown v. Chesterville*, 63 Me. 241; *Bryan v. Fractional, &c.*, 111 Mich. 67, 69 N. W. 74; *Ryan v. School, &c.*, 27 Minn. 433, 8 N. W. 146; *Barr v. Deniston*, 19 N. H. 170; *Goose River Bank v. Willow Lake, &c.*, 1 N. D. 26; *Davis v. Harrison*, 140 Ky. 520, 131 S. W. 272.

¹ *Kidder v. Chellis*, 59 N. H. 473.

² *Barr v. Deniston*, 19 N. H. 170.

³ *Perkins v. Wolf*, 17 Iowa 228.

⁴ *Hale v. Risley*, 69 Mich. 599, 37 N. W. 570.

⁵ *Kester v. School District, &c.*, 48 Wash. 486, 93 Pac. 907; *Davis v. Harrison*, 140 Ky. 520, 131 S. W. 272.

conform to law. In the revocation of such license the bias and want of judicial capacity of the County Superintendent is no ground for interference by the courts.¹

Where the statute provides that County Superintendents may endorse unexpired teachers' certificates issued in other counties the duty to do so is imperative.² And a writ of *mandamus* may be used to compel an official to examine an applicant,³ and to compel the issuance of a certificate,⁴ and also to compel recognition of a teacher,⁵ and to compel the employment of a duly licensed teacher.⁶

§ 64. Contract of Employment.

In contracting for the employment of a teacher it is, of course, necessary that all statutory regulations as to formation of contracts be followed,⁷ and where a written contract with a teacher is required under the statute, no other form of contract is legal.⁸ School officers acting officially and within their jurisdiction bind the *quasi* corporation of which they are representatives; and their legal contracts concerning matters within the duties of their office may be enforced against

¹ *Stone v. Fritts*, 169 Ind. 361, 82 N. E. 792.

² *Johnson v. Connelly*, 88 Kan. 861, 129 Pac. 1192.

³ *Stroup v. Beer*, 25 Pa. Co. Ct. 1.

⁴ *Keller v. Hewitt*, 109 Cal. 146, 41 Pac. 871.

⁵ *Pearsall v. Woods*, 50 S. W. (Tex.) 959.

⁶ *Brown v. Owen*, 75 Miss. 319, 23 So. 35.

⁷ *Place v. District, &c.*, 56 Iowa 573, 9 N. W. 917; *Dyberry, &c., v. Mercer*, 115 Pa. St. 559, 9 Atl. 64.

⁸ *Griggs v. School District, &c.*, 87 Ark. 93, 112 S. W. 215.

their successors.¹ The contracts of a *de facto* officer are valid even though he is not an officer *de jure*.²

Where the rules and regulations of the district fix the time the schools are to be opened and such rules and regulations are made a part of the contract, the contract will not be invalid because it does not state the time the school is to be taught.³ And where the statute names the first four grades as the primary grades, a teacher cannot be required, under a contract to teach the primary department, to teach higher grades although the classes be sent to the primary room for that purpose.⁴

The contract of a teacher being for his personal services, he is not at liberty to employ a substitute in the performance of his contract.⁵ And the hiring of a school teacher at a lesser wage than is provided by a minimum wage law is a crime; and such law is not unconstitutional.⁶

Where school directors employ a teacher in the manner prescribed by law and the officers violate an executory contract with the teacher, which is made within their authority, the school district will be liable even if no benefit has been received by the district under the contract.⁷ And an invalid contract

¹ Wait *v.* Ray, 67 N. Y. 36.

² Milford *v.* Powner, 126 Ind. 528, 26 N. E. 484; Woodbury *v.* Knox, 74 Me. 462.

³ Burkhead *v.* Independent, &c., 107 Iowa 29, 77 N. W. 491.

⁴ Butler *v.* Windsor, 155 Wis. 626, 145 N. W. 180.

⁵ School Directors *v.* Hudson, 88 Ill. 563.

⁶ Bopp *v.* Clark, 165 Iowa 697, 147 N. W. 172.

⁷ Jackson, &c., *v.* Shera, 8 Ind. App. 330, 35 N. E. 842; Mingo *v.* Colored Common School, &c., 113 Ky. 475, 68 S. W. 483.

of employment may be ratified by the knowledge and conduct of school directors.¹

Where the term of service is legally specified in the contract, a teacher cannot claim employment for a longer period.² But where a teacher is employed from a specific date and the duration of the period is not specified, he will be entitled to continue during the school year subject to any condition of the contract.³

It being the duty of a school board to prepare a proper form of contract with a teacher, it is no defense to a *mandamus* brought against the chairman of such board to compel him to sign such contract that the contract was not in proper form.⁴

It is the business of school districts to keep up public schools, and it is the duty of officers to provide teachers, and to make contracts with them. It is their duty to know under what conditions a teacher, whom they know to be teaching, claims to act. And a board by abstaining from holding meetings, and from doing its duty, cannot set up its own wrong in defense of an honest claim. Therefore a contract with a teacher need not be signed by the school board simultaneously, in order to make valid a contract upon which services have been rendered; and a contract valid upon its face, actually carried out with the acquiescence of all concerned, cannot be subsequently repudiated.⁵ So

¹ School District, &c., v. Jackson, 110 Ark. 262, 161 S. W. 153.

² Marion v. Board, &c., 97 Cal. 606, 32 Pac. 643.

³ Butcher v. Charles, 95 Tenn. 532, 32 S. W. 631.

⁴ Davis v. Harrison, 140 Ky. 520, 131 S. W. 272.

⁵ Holloway v. School District, &c., 62 Mich. 153, 28 N. W. 764; School District v. Stone, 14 Colo. App. 211, 59 Pac. 885.

a contract signed by a teacher subsequent to the meeting at which the directors met together and participated in the selection of the teacher and decided upon the wages and time of employment, is valid.¹ But where the trustees separately agree to employ a teacher, and subsequently as a board assembled, vote to repudiate the agreement, the teacher is without redress inasmuch as the contract was void and against public policy.²

Where the statute requires that a teacher's contract shall be in writing, a teacher cannot recover on a *quantum meruit* for services rendered on an oral contract.³ Such statute is mandatory,⁴ but requirement of a duplicate contract is directory only.⁵ And an oral contract to continue teaching school after the expiration of a required written contract is unenforceable, and no recovery can be had for services rendered upon such oral contract.⁶

Where, however, the contract is not required to be in writing a teacher who is lawfully employed in absence of a contract, is entitled to receive the reasonable value of the service rendered upon a *quantum meruit*.⁷ And if one, without authority, enter upon

¹ School District, &c., v. Allen, 83 Ark. 491, 104 S. W. 172.

² McGinn v. Willey, 6 Cal. App. 111, 91 Pac. 423.

³ Lee v. York, &c., 163 Ind. 339, 71 N. E. 956; Leland v. School District, &c., 77 Minn. 469, 80 N. W. 354; City School, &c., v. Hickman, 47 Ind. App. 500, 94 N. E. 828.

⁴ Taylor v. Petersburg, 33 Ind. App. 675, 72 N. E. 159.

⁵ McShane v. School District, 70 Mo. App. 624.

⁶ Hutchins v. School District, &c., 128 Mich. 177, 87 N. W. 80.

⁷ Offut v. Bourgeois, 16 La. An. 163; Jones v. School District, &c., 8 Kan. 362.

the duties as teacher in a public school, and the district accepts the services, drawing its portion of the public school money by reason of the services of the teacher, the teacher may recover for the services rendered upon a *quantum meruit*.¹

An act of God which renders performance of a contract impossible, will excuse from liability thereon. But presence of a contagious disease does not render impossible the teaching of a school, to those who are not afflicted thereby. And if a teacher remains ready to perform the contract, the suspension of the school for such reason, does not preclude the right to compensation during such period of suspension.² But if the contract is to teach for a given period unless the school is discontinued by order of the board, the closing of the schools during the period of an epidemic, precludes the right to compensation during such period, although a recovery may be had on the other portions of the contract period both before and after the epidemic.³

Where the statute provides that the committee shall "appoint and agree with a teacher to instruct the school" the district cannot control the committee by a vote to employ a female teacher, as such vote would be advisory only. And if the committee, notwithstanding such vote, hires a male teacher, giving him an order for instructing the school, the district

¹ Scott *v.* School District, 67 Vt. 150, 31 Atl. 145.

² Libby *v.* Douglas, 175 Mass. 128, 55 N. E. 808; McKay *v.* Barnett, 21 Utah 239, 60 Pac. 1100; Dewey *v.* Union, &c., 43 Mich. 480, 5 N. W. 646; Gear *v.* Gray, 37 N. E. (Ind.) 1059; Randolph *v.* Sanders, 22 Tex. Civ. App. 331, 54 S. W. 621.

³ Goodyear *v.* School District, 17 Oreg. 517, 21 Pac. 664.

is bound to pay it; and if it does not do so and several years later elects the teacher treasurer of the district, he may pay himself the amount due.¹

A teacher cannot be lawfully employed by two members of the district board without the concurrence of the third member when the statute expressly requires the convening of the board for the transaction of business.² But such contract by two members of the board with the consent of the third member is binding on the district.³

Unless there is a limitation in the statute, a school district can employ a teacher or superintendent of schools for two scholastic years, even though the term of office of some members of the board does not extend through that period.⁴ But they may not contract for an unreasonable time beyond the current school year.⁵ Nor so as to divest future boards of the power to select the teachers they shall desire.⁶

¹ *Waterbury v. Harvey*, 56 Vt. 556.

² *Hazen v. Lerche*, 47 Mich. 626, 11 N. W. 413; *Ryan v. Humphries*, 150 Pac. (Okla.) 1106; *Aiken v. School District, &c.*, 27 Kan. 129; *School Directors, &c., v. Jennings*, 10 Ill. App. 643; *Townsend v. Trustees, &c.*, 41 N. J. L. 312; *Dennison v. Padden*, 89 Pa. St. 395; *Castro v. Board, &c.*, 38 W. Va. 707, 18 S. E. 923. But see, *Russell v. State*, 13 Neb. 68, 12 N. W. 829; *Montgomery v. State*, 35 Neb. 655, 53 N. W. 568.

³ *Brown v. School District, &c.*, 1 Kan. App. 530, 40 Pac. 826.

⁴ *Caldwell v. School District, &c.*, 55 Fed. 372; *Cleveland v. Amy*, 88 Mich. 374, 50 N. W. 293; *Gates v. School District*, 53 Ark. 468, 14 S. W. 656; *School District v. Morse*, 8 Cush. (Mass.) 191; *Wilson v. E. Bridgeport, &c.*, 36 Conn. 280; *Reubelt v. Noblesville*, 106 Ind. 478, 7 N. E. 206.

⁵ *Stevenson v. School Directors*, 87 Ill. 255.

⁶ *School Directors v. Hart*, 4 Ill. App. 224; *Cross v. School Directors*, 24 Ill. App. 191; *Fitch v. Smith*, 57 N. J. L. 526, 34 Atl. 1058.

But in Iowa it has been held that a contract extending beyond one school year is invalid;¹ and in any event a contract is not valid for any period beyond that specified by statute.²

The contract of a teacher to teach a school for a given term of several months at a given rate per month is an entire contract,³ and if the teacher leaves before the term is finished, without sufficient cause, there can be no recovery for services up to the time of leaving.⁴

A school board has no implied authority to fix the living or boarding place of a teacher, in making a contract to teach, and incorporate such as a condition of the contract.⁵

In contracting with a teacher, the teacher in accepting the engagement to teach, impliedly agrees that he has the requisite learning, and the capacity to impart it to the pupils.⁶

If a trustee of a school district is employed by the other two trustees to teach the district school, his office as trustee becomes vacant upon accepting and entering upon his duties as teacher, the duties of the two offices being incompatible.⁷ But it has been held

But see, *Milford v. Zeigler*, 1 Ind. App. 138, 27 N. E. 303; *Silver v. Cummings*, 7 Wend. (N. Y.) 181.

¹ *Burkhead v. Independent, &c.*, 107 Iowa 29, 77 N. W. 491.

² *Jay v. School District, &c.*, 24 Mont. 219, 61 Pac. 250.

³ *Turner v. Baker*, 30 Ark. 186.

⁴ *Clark v. School District*, 29 Vt. 217. *Contra*: *Riggs v. Horde*, 25 Tex. Supp. 456.

⁵ *Horne v. School District, &c.*, 75 N. H. 411, 75 Atl. 431.

⁶ *Biggs v. Mt. Vernon*, 45 Ind. App. 572, 90 N. E. 105.

⁷ *Ferguson v. True*, 66 Ky. 255.

that a moderator of a district may employ her husband to teach the district school at a contract price that is greater than would be necessary to secure a better teacher, and still not be liable to removal from office,¹ and that a school director may employ his minor daughter as a teacher.²

If a school board, without power to dismiss a regularly qualified teacher who is under contract to teach for a specified time, should attempt to do so, and the teacher should accept such unauthorized dismissal, such acceptance is a voluntary abandonment of the contract which precludes a recovery for the unfinished term.³

If a public school teacher contracts to give up an advantage given by statute, such contract is void as against public policy.⁴ And where the contract with a teacher provides for dismissal on thirty days' notice, such notice given before the services are begun is effective and valid.⁵ And the marriage of a female school teacher is not good ground for the abrogation of the contract under which she has agreed to teach.⁶

The rules as to the measure of damages in the breach of a contract to teach a public school, are the same as in case of the breach of ordinary contracts.⁷

¹ *Hazen v. Township Board*, 48 Mich. 188, 12 N. W. 43.

² *State v. Burchfield*, 80 Tenn. 30.

³ *Oakes v. School District, &c.*, 98 Mo. App. 163, 71 S. W. 1060.

⁴ *Board, &c., v. Burton*, 30 Ohio Cir. Ct. 411.

⁵ *Dees v. Board, &c.*, 146 Mich. 64, 109 N. W. 39.

⁶ *Jameson v. Board, &c.*, 74 W. Va. 389, 81 S. E. 1126.

⁷ *Byrne v. School District, &c.*, 139 Iowa 618, 117 N. W. 983.

§ 65. Compensation.

A teacher who performs the duties called for in the contract or by the provision of the statute, is entitled to compensation by those who contract for the employment.¹ If the compensation is expressed in the contract, then that is the compensation to be paid, but, if no compensation is fixed, either by statute or contract, the teacher may recover on a *quantum meruit* for services actually rendered,² and, in arriving at the *quantum meruit*, evidence as to the compensation paid during the previous year is not admissible.³

Unless specifically provided by the contract, no deduction can be made from the compensation agreed upon, by reason of closing the school on account of an epidemic,⁴ or by the destruction of the school building,⁵ or on account of diminution of pupils,⁶ or for legal holidays,⁷ so long at least as the teacher keeps himself in readiness to perform his duties.⁸

Unless the contract so provides, a school teacher is

¹ Earl of Thanet *v.* Gartham, 8 J. B. Moore, 368.

² Offut *v.* Bourgeois, 16 La. An. 163; Tyler *v.* Tualatin Academy, 14 Oreg. 485, 13 Pac. 329.

³ Jackson School *v.* Grimes, 24 Ind. App. 331, 56 N. E. 724.

⁴ Dewey *v.* Union School District, 43 Mich. 480, 5 N. W. 646; Libby *v.* Douglas, 175 Mass. 128, 55 N. E. 808; Smith *v.* School District, &c., 89 Kan. 225, 131 Pac. 557.

⁵ School Directors *v.* Crews, 23 Ill. App. 367; Smith *v.* School District, 69 Mich. 589, 37 N. W. 567; Cashen *v.* School District, 50 Vt. 30; Charlestown, &c., *v.* Hay, 74 Ind. 127; Corn *v.* Board, &c., 39 Ill. App. 446. *Contra:* Hall *v.* School District, &c., 24 Mo. App. 213.

⁶ Singleton *v.* Austin, 27 Tex. Civ. App. 88; 65 S. W. 686.

⁷ Holloway *v.* School District, &c., 62 Mich. 153, 28 N. W. 764.

⁸ Libby *v.* Douglas, 175 Mass. 128, 55 N. E. 808.

not to be deprived of the agreed compensation by reason of the burning of the schoolhouse. The directors may furnish another building or room in which the school may be continued, and if they do not, or are unable to do so, the liability for the salary still exists.¹ And a school teacher appointed by a *de facto* school agent may recover for his services.² But an unlicensed teacher cannot recover compensation.³

When it is not against the rules of the school board, and is made necessary by the crowded condition of the school, a teacher may assign a proficient scholar to hear classes, and a school board has no legal right to withhold the teacher's wages because of so doing.⁴ And the wrongful exclusion of a pupil, by a teacher in a public school, does not defeat the right of a teacher to his agreed compensation.⁵

A treasurer of a school district, having funds belonging to the district which have been appropriated to the payment of a teacher's salary, becomes personally liable to the teacher if he refuses to pay a proper order on demand for the amount specified.⁶ And if the trustees of a school district fail to raise the funds to pay the salary of a teacher with whom they

¹ *Corn v. Board, &c.*, 39 Ill. App. 446; *Charlestown, &c., v. Hay*, 74 Ind. 127. *Contra*: *Hall v. School District, &c.*, 24 Mo. App. 213.

² *Woodbury v. Knox*, 74 Me. 462.

³ *Flanary v. Barrett*, 146 Ky. 712, 143 S. W. 38.

⁴ *Perkins v. School District, &c.*, 61 Mo. App. 512.

⁵ *State v. Blain*, 36 Ohio St. 429.

⁶ *Edson v. Hayden*, 18 Wis. 627.

have contracted, they are personally liable for the amount.¹

Where an obligation rests upon a county or town to pay for the services of a teacher, the placing of the money for that purpose with the proper custodian of the fund does not discharge the obligation.² And the salary of a public school teacher is not attachable by trustee process while it is in the hands of city officials whose duty it is to pay it.³

§ 66. Powers.

The teacher has, in a proper case, the inherent power to suspend a pupil from the privileges of his school, unless he has been deprived of the power by the affirmative action of the proper board.⁴

The teacher could not perform the duties of his employment without maintaining proper and necessary discipline in the school, and it is his right, and might be his duty, to expel the pupil to save the rest of the school from being injured by his presence. It is not the duty of the teacher to teach the school without maintaining proper and necessary discipline in it, and if the committee insist that the pupil should be there, when the teacher could not have him there, and have the discipline too, it was equivalent to insisting that

¹ *Ferguson v. True*, 66 Ky. 255.

² *Caldwell County v. Harbert*, 68 Tex. 321, 4 S. W. 607; *Clark v. Great Barrington*, 11 Pick. (Mass.) 260.

³ *Hightower v. Slaton*, 54 Ga. 108; *Pruitt v. Armstrong*, 56 Ala. 306; *School District, &c., v. Gage*, 39 Mich. 484. But see, *Seymour v. School District*, 53 Conn. 502, 3 Atl. 552; *Bates v. Bates*, 74 Ga. 105.

⁴ *State v. Burton*, 45 Wis. 154.

the teacher could teach the school without discipline, which he was not bound to do. So it was held that the committee had no legal right to discharge the teacher for the reason that he had expelled a pupil against the wishes of the directors and without their consent.¹

A teacher has no authority to contract for the sweeping and keeping of fires in a schoolhouse, although the district board refused to do so, and the service was actually necessary.²

§ 67. Religious Garb.

It has been held that the employment of teachers in the public schools, representatives of a religious order, who wear in school a distinctive sectarian garb of their order is not a violation of the law or an abuse of discretion on the part of the school authorities which the courts could control, and that this situation was not changed by the fact that the teachers contributed all their earnings beyond their support to the treasury of their order for religious purposes. This case arose by a suit for an injunction to restrain the school board from continuing the employment of such teachers, and there had been no rule by the school authorities against the wearing of such garb and emblems by the teachers.

The action brought, however, was rather an attempt by individual citizens to override the judgment and

¹ *Scott v. School District*, 46 Vt. 452; *Parker v. School District*, 5 Lea (Tenn.) 525.

² *Taylor v. School District*, 60 Mo. App. 372.

discretion of the school board on the ground that they were violating the provisions of the State constitution guaranteeing equal rights of conscience and prohibiting preference by law to religious establishments or modes of worship, and the use of public money for sectarian schools. The court, however, sustained the lawfulness of the employment of such teachers for the reason that in the matter was involved solely the exercise of discretion by the school board in their performance of the official duty, for which they alone were responsible, and that this discretion when it does not transgress the law is not reviewable by any court.¹

It has been held, however, that a superintendent of public instruction may prohibit a teacher from wearing a distinctly religious garb while teaching in the public schools that are under his charge, and such regulation is reasonable and valid.²

§ 68. Bible Reading and Religious Worship.

The reading of the Bible, repeating the Lord's Prayer, and singing religious songs in public schools, have been protested against as promoting sectarian purposes, making the public schools places of worship, and for such reasons unconstitutional; and when such matters have been brought before various courts, quite divergent views have been held, some courts holding that such Bible reading at all is unconstitu-

¹ *Hysong v. Gallitzin, &c.*, 164 Pa. St. 629, 30 Atl. 482; *Hutchinson v. Skinner*, 21 Misc. Rep. 729, 49 N. Y. S. 360.

² *O'Connor v. Hendrick*, 184 N. Y. 421, 77 N. E. 612.

tional, others that even the Protestant version is not legally objectionable to any sect; and in one case it was held that the reading of the Bible could be prohibited on the protest of a Jew, but not when objected to by a Catholic.¹ The great weight of opinion, however, seems to be that such reading of the Bible, repeating of the Lord's Prayer, and singing of religious songs are lawful when done without comment, excusing from participation such children whose parents or guardians so request.²

It would not be competent for a school committee to pass an order or regulation requiring pupils to conform to any religious rite or observance, or to go through with any religious forms or ceremonies which were inconsistent with or contrary to their religious convictions or conscientious scruples. Such a requisition would be a violation of the constitutional provision that no one shall be hurt or molested in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience. So an order or regulation of the school committee which would require a pupil to join in a religious rite or ceremony contrary to his or her religious opinions, or those of a parent or guardian, would be clearly unreasonable and invalid.

But under a statute requiring that the reading of the Bible in public schools shall be without written

¹ *Herold v. Parish Board, &c.*, — La. —, 68 So. 116.

² *Billard v. Board, &c.*, 69 Kan. 53, 76 Pac. 422; *Hackett v. Brooksville, &c.*, 120 Ky. 608, 87 S. W. 792.

note or oral comment, and providing that no pupil shall be called upon to read any particular version, whose parent or guardian shall declare that such pupil has conscientious scruples against allowing him to read therefrom, a lawful order may be made by the school committee that the schools in their district shall be opened each morning with reading from the Bible, and prayer, and that during the prayer each pupil shall bow the head, unless the parents request that the pupil shall be excused from doing so; and they may lawfully exclude from the school a pupil who refuses to comply with such order, and whose parents refuse to request that the pupil shall be excused from so doing.

No more appropriate method could be adopted of keeping in the minds of both teachers and pupils that one of the chief objects of education is to impress on the minds of children and youth committed to the care and instruction of the public schools, the principles of piety and justice, and a sacred regard for the truth. Such rule does not prescribe an act which is necessarily one of devotion or religious ceremony, but goes no further than to require the observance of quiet and decorum during the religious service with which the school is opened. It does not compel a pupil to join in the prayer, but only to assume an attitude which is calculated to prevent interruption, by avoiding all communication with others during the service. And such regulation does not require a pupil to comply with that part of it prescribing the position of the head during prayer, if the parent requested a child

to be excused from it.¹ And it has been held that under a statute providing that the Bible shall not be excluded from any school of the State, nor that any pupil shall be required to read it, contrary to the wishes of his parent or guardian, an injunction will not be granted to restrain the reading or repeating therefrom, on a suit brought by a taxpayer whose children are not required to be present during such exercises.²

In Texas it has been held that exercises in the public schools consisting of the reading of non-sectarian extracts from the Bible, by the teacher without comment, and repeating the Lord's Prayer, and the singing of appropriate songs in which the pupils are invited but not required to join does not make the schools places of worship.³ And in Maine it was held that even where the committee required that the Protestant version of the Bible should be read in the schools by scholars able to read, it was not only constitutional but binding upon all members of the school, although composed of various sects.⁴ But in Illinois and some other States the reading of the Bible in the public schools is held unconstitutional as promoting a sectarian purpose.⁵

¹ *Spiller v. Woburn*, 12 Allen (Mass.) 127. But see, *Stevenson v. Hanyen*, 1 Lack. Leg. N. (Pa.) 99.

² *Moore v. Monroe*, 64 Iowa 367, 20 N. W. 475; *Hart v. School District, &c.*, 2 Lanc. L. Rev. (Pa.) 346. See also, *Nessle v. Hum*, 1 Ohio N. P. 140. *Contra*: *State v. District Board, &c.*, 76 Wis. 177, 44 N. W. 967.

³ *Church v. Bullock*, 109 S. W. (Tex.) 115.

⁴ *Donahoe v. Richards*, 38 Me. 379.

⁵ *People v. Board, &c.*, 245 Ill. 334, 92 N. E. 251. See exhaustive and scholarly essay by Henry Schofield, Professor of Law in North-

A pupil may be excluded for absence from school without leave, even if done through a sense of religious obligation, and at the behest of his parents. And such an exclusion is not a violation of the constitutional provision preserving the right to worship God according to the dictates of one's own conscience without being abridged in the enjoyment of civil rights.¹

§ 69. Discharge, Removal and Suspension.

A teacher, even if employed under a valid contract, may nevertheless be discharged for a good and sufficient cause,² such as for incompetency,³ neglect of duty,⁴ immoral conduct,⁵ failure to manage and govern the school,⁶ refusal to obey the valid orders of the board of directors,⁷ lack of discretion and desirable temper,⁸ tardiness in going to school,⁹ or other sufficient cause.

western University, in Vol. VI. Illinois Law Review, 17-91, entitled "Religious Liberty and Bible Reading in the Illinois Public Schools", in which this case is adversely considered in detail. *State v. Scheve*, 65 Neb. 853, 91 N. W. 846; *State v. District, &c.*, 76 Wis. 177, 44 N. W. 967.

¹ *Ferriter v. Tyler*, 48 Vt. 444, in which case see excellent discussion of constitutional principles involved.

² *Robinson v. School, &c.*, 96 Ill. App. 604; *Tripp v. School, &c.*, 50 Wis. 657, 7 N. W. 840.

³ *Crawfordsville v. Hays*, 42 Ind. 200.

⁴ *School District v. Maury*, 53 Ark. 471, 14 S. W. 669; *School Directors v. Hudson*, 88 Ill. 563; *Holden v. Shrewsbury, &c.*, 38 Vt. 529.

⁵ *School District v. Maury*, 53 Ark. 471, 14 S. W. 669; *McLellan v. St. Louis Public Schools*, 15 Mo. App. 362; *State v. Board, &c.*, 1 Ohio N. P. 151; *Tingley v. Vaughn*, 17 Ill. App. 347.

⁶ *Eastman v. District, &c.*, 21 Iowa 590.

⁷ *Parker v. School District*, 5 Lea (Tenn.) 525.

⁸ *Robinson v. School Directors*, 96 Ill. App. 604.

⁹ *School Directors v. Birch*, 93 Ill. App. 499.

But the board has no power to discharge a teacher before the expiration of the term of his contract without good cause,¹ nor have they the power to transfer a teacher from a higher to a lower grade.² Assigning a teacher to a lower grade is a "removal", and just as much so as a dismissal would be.³

The right to discharge a teacher at the pleasure of a school board may be reserved in the contract with the teacher, and is sometimes provided by statute, but in order to make the exercise of this right a valid one the cause for discharge must be legally sufficient.⁴ It has been held, however, that such a reservation of right to discharge is against public policy and consequently invalid.⁵ Where the statute provides that a teacher can be discharged only for good cause shown, there must be an accusation, notice, and evidence before the board in its official capacity, and an opportunity given the teacher to be heard before dismissal.⁶ But if the teacher makes an appearance at

¹ *School District v. Hale*, 15 Colo. 367, 25 Pac. 308; *Crawfordsville v. Hays*, 42 Ind. 200; *Searsmont v. Farwell*, 3 Me. 450; *Wallace v. School District*, 50 Neb. 171, 69 N. W. 772.

² *Kennedy v. Board, &c.*, 82 Cal. 483, 22 Pac. 1042.

³ *Kennedy v. Board, &c.*, 82 Cal. 483, 22 Pac. 1042; *Fairchild v. Board, &c.*, 107 Cal. 92, 40 Pac. 26; *In re Gleese*, 50 N. Y. Super. Ct. 473.

⁴ *Olney School District v. Christy*, 81 Ill. App. 304; *Armstrong v. Union, &c.*, 28 Kan. 345; *Richardson v. School District*, 38 Vt. 602.

⁵ *Thompson v. Gibbs*, 97 Tenn. 489, 37 S. W. 277.

⁶ *School District, &c., v. Stone*, 14 Colo. App. 211, 59 Pac. 885; *School District, &c., v. Shuck*, 49 Colo. 526, 113 Pac. 511; *Rumble v. Barker*, 27 Ind. App. 69, 60 N. E. 956; *White v. Wohlenberg*, 113 Iowa 236, 84 N. W. 1026; *Edinboro Normal School v. Cooper*, 150 Pa. St. 78, 24 Atl. 348; *Butcher v. Charles*, 95 Tenn. 532, 32 S. W. 631.

the hearing, the want of notice of such hearing has been held to be waived.¹

In dismissing a teacher for due cause the affirmative vote of the majority of the school board is necessary,² although the statutes may require a greater affirmative vote, for example, three-fourths of the number.³ And an entry on the records of the meeting of the names of the persons voting has been held essential.⁴

For reasons of public policy the legislature may provide that the school committee may dismiss from employment any teacher whenever they think proper, and such teacher shall receive no compensation for services rendered after such dismissal. And under such statute a teacher engaged by the school committee for a fixed time, and at a stated salary, may be discharged by the committee, and no action can be maintained against the town for salary for the remainder of the contracted time of employment.⁵

The power to dismiss teachers is generally expressed in the statutes, which vary in different jurisdictions, but they must always be strictly followed. If there is no statutory provision regarding the removal of teachers, that right rests with those who have power to employ them.⁶

Where a school teacher is engaged for a specific

¹ *Kellison v. School District, &c.*, 20 Mont. 153, 50 Pac. 421.

² *Keating v. Neary*, 9 Kulp (Pa.) 421.

³ *People v. Board, &c.*, 69 Hun (N. Y.) 212, 23 N. Y. S. 473.

⁴ *Com. v. Risser*, 3 Pa. Super. Ct. 196.

⁵ *Wood v. Medfield*, 123 Mass. 545.

⁶ *Wallace v. School District*, 50 Neb. 171, 69 N. W. 772; *People v. Hyde*, 89 N. Y. 11.

term and is discharged without cause before the termination of the specific term, compensation for the period covered by the unlawful discharge may be recovered in an action for a breach of the contract.¹ This right of a teacher to recover for an unlawful discharge may be defeated by a new agreement, as where the teacher accepts a half month's salary and voluntarily gives up the school.² But where a teacher is dismissed for sufficient cause and is afterwards for good cause reinstated, he cannot recover for services rendered in the meantime,³ and a denial of a writ of *mandamus* will not bar subsequent action.⁴

Where a teacher is validly removed for cause, his right to receive further salary is terminated by the notice which he receives,⁵ and where the statute specifies the causes for which the board of school directors has power to discharge a teacher, a discharge in accordance therewith is final and conclusive, and no recovery can be had for breach of contract unless the board acted corruptly and in bad faith and in clear abuse of its powers.⁶

A teacher wrongfully dismissed by a school board is not required to accept other employment of a differ-

¹ School District, &c., v. Hale, 15 Colo. 367, 25 Pac. 308; Armstrong v. School District, 19 Mo. App. 462; Swartwood v. Walbridge, 57 Hun (N. Y.) 33, 10 N. Y. S. 862; Richardson v. School District, 38 Vt. 602; Scott v. Joint School District, 51 Wis. 554, 8 N. W. 398.

² Frazier v. School District, 24 Mo. App. 250.

³ Kellison v. School District, 20 Mont. 153, 50 Pac. 421.

⁴ Steinson v. Board, &c., 165 N. Y. 431, 59 N. E. 300.

⁵ Wood v. Medfield, 123 Mass. 545; Gillan v. Board, &c., 88 Wis. 7, 58 N. W. 1042.

⁶ McCrea v. Pine Township, &c., 145 Pa. St. 550, 22 Atl. 1040.

ent character or grade,¹ nor to accept an offer upon terms not in accordance with the original contract,² and the measure of damages, ordinarily the amount of the agreed wages,³ is not lessened by refusal to accept an offer not equal in terms to that of the broken contract.⁴

If a teacher under contract to teach one year is discharged without cause before the expiration of that period, and finds it impossible to secure another position for the remaining part of such period, a recovery may be had for the remaining part of the contract period at the full contract price.⁵ The burden of showing that a discharged teacher might have secured other similar employment, and thereby have reduced the damages, is upon the district.⁶ And when a teacher holding a license to teach is discharged for incompetency, the burden is on the school authorities to establish the truth of the charge. A recital of the facts constituting such incompetency contained in the order of removal estops them from showing different or other facts or causes.⁷

Where the statute gives a right of an appeal to the County or State Superintendent in case of wrongful dismissal by the school board, a teacher cannot main-

¹ *Farrell v. School District*, 98 Mich. 43, 56 N. W. 1053.

² *Sparta, &c., v. Mendell*, 138 Ind. 188, 37 N. E. 604.

³ *School District, &c., v. Hale*, 15 Colo. 367, 25 Pac. 308; *School District v. Kimmel*, 31 Ill. App. 537; *McCutchen v. Windsor*, 55 Mo. 149; *Scott v. School District, &c.*, 46 Vt. 452.

⁴ *Jackson v. Independent, &c.*, 110 Iowa 313, 81 N. W. 596.

⁵ *Worthington v. Oak, &c.*, 100 Iowa 39, 69 N. W. 258.

⁶ *Carver v. School District, &c.*, 113 Mich. 524, 71 N. W. 859.

⁷ *Darter v. Board, &c.*, 161 Ill. App. 284.

tain an action against the school board for a breach of contract unless he has taken steps toward reinstatement as a teacher by such appeal.¹

A public school teacher is not a public officer, and the contract of a teacher is one of employment, and, inasmuch as in case of wrongful discharge an adequate remedy at law lies in damages for the breach of the contract, a writ of *mandamus* will not be issued;² nor will a writ of injunction by or against a board of trustees for violation of its contract in discharging a teacher and substituting another in his place, either on the part of the teacher or on the part of the taxpayers and patrons of the school.³ And where a teacher is employed by a school board, he is barred from having his discharge reviewed in any tribunal except that created by statute.⁴ If the school board acts fairly within the scope of its duty, members of the board are not personally liable for damages unless they exceed their authority and act maliciously or wantonly.⁵

A tendered resignation of a school teacher will not amount to an abandonment of the contract until the resignation is accepted, and the teacher has a right

¹ *Park v. Independent, &c.*, 65 Iowa 209, 21 N. W. 567; *Kirkpatrick v. Independent, &c.*, 53 Iowa 585, 5 N. W. 750; *Harkness v. Hutcherson*, 90 Tex. 383, 38 S. W. 1120; *Van Dyke v. School District, &c.*, 43 Wash. 235, 86 Pac. 402.

² *State v. Smith*, 49 Neb. 755, 69 N. W. 114; *Swartwood v. Walbridge*, 57 Hun (N. Y.) 34, 10 N. Y. S. 862.

³ *School District, &c., v. Carson*, 9 Colo. App. 6, 46 Pac. 846.

⁴ *Draper v. Public Instruction Commissioners*, 66 N. J. L. 54, 48 Atl. 556.

⁵ *Morrison v. McFarland*, 51 Ind. 206; *Gregory v. Small*, 39 Ohio St. 346; *Burton v. Fulton*, 49 Pa. St. 151; *McCutchen v. Windsor*, 55 Mo. 153.

to withdraw a resignation at any time before it is acted upon by the school board.¹ And a teacher having a proper certificate, and who has contracted to teach, cannot be dismissed for incompetency before any services have been rendered.²

Where the statute provides that teachers may be dismissed at the pleasure of the board, a contract made for a definite period of service is presumed to be made in view of that statutory provision, and a teacher employed under such contract may, nevertheless, be dismissed at pleasure of the board.³ But in absence of such statutory provision a school teacher employed for a term, and dismissed at the end of the first week's employment, and without good cause, is entitled to damages.⁴

Where a teacher refuses to consent to a vacation ordered by the board of directors during the term for which the teacher was employed, but which was not specified in the contract to teach, and the directors forcibly seized and ejected the teacher from the schoolhouse in the enforcement of such vacation, the directors were found guilty of assault and battery.⁵ And where school officers forcibly and illegally dispossessed the teacher of the schoolhouse, they were held individually liable for damages.⁶

¹ *Curttright v. Independent, &c.*, 111 Iowa 20, 82 N. W. 444.

² *Farrell v. School District, &c.*, 98 Mich. 43, 56 N. W. 1053.

³ *Gillan v. Board, &c.*, 88 Wis. 7, 58 N. W. 1042; *Bays v. State*, 6 Neb. 167; *Jones v. Nebraska City*, 1 Neb. 176.

⁴ *Doyle v. School Directors*, 36 Ill. App. 653.

⁵ *White v. Kellogg*, 119 Ind. 320, 21 N. E. 901.

⁶ *McCutchen v. Windsor*, 55 Mo. 149.

Where neither statute nor contract provides that marriage of a female teacher shall be a cause for removal there is no right to remove such teacher for reason of her marriage.¹ But the absence of a married woman teacher from her employment by reason of maternity might be of such length as to support a charge of neglect of duty and authorize her removal, although a mere absence for such reason would not.² The dismissal of a married female teacher for neglect of duty, by reason of her absence for three months for reason of maternity, will not be reviewed on *mandamus*.³

School directors have the power to suspend a teacher for non-compliance with an order that all teachers shall be vaccinated.⁴ And a teacher who refuses to admit a pupil, dismissed by her, until the conduct of the pupil may be inquired into, is guilty of insubordination and may be discharged therefor.⁵

§ 70. Right to Chastise Pupils.

A teacher may, for proper cause, reasonably and moderately chastise a pupil,⁶ especially for conduct tending to demoralize other pupils and to interfere with the proper management of the school.⁷ But where a teacher punishes a pupil in a cruel manner,

¹ *People v. Board, &c.*, 82 Misc. Rep. 684, 144 N. Y. S. 87.

² *People v. Board, &c.*, 160 N. Y. App. Div. 557, 145 N. Y. S. 853.

³ *People v. Board, &c.*, 212 N. Y. 463, 106 N. E. 307.

⁴ *Lyndall v. High School Committee*, 19 Pa. Super. Ct. 232.

⁵ *Leddy v. Board, &c.*, 160 Ill. App. 187.

⁶ *Cook v. Neely*, 143 Mo. App. 632, 128 S. W. 233.

⁷ *Dodd v. State*, 94 Ark. 297, 126 S. W. 834.

and a parent incited thereby assaults the teacher, such punishment may be shown in mitigation of exemplary damages although not justifying the assault.¹

The corporal punishment that a school teacher may inflict on a pupil is such that the general judgment of reasonable men would not pronounce it excessive.² A school teacher, for the purpose of correction, represents the parent, and has the parental authority in this regard delegated to him.³ But a parent cannot expressly delegate any authority which he does not himself possess, as, for example, to administer excessive punishment. The power of the school teacher, also, has a natural limitation, as the love and affection of the parent which would temper the chastisement cannot be delegated, and consequently the power is more liable to abuse as thus delegated.⁴

The teacher, being charged with a part of the parents' duties to train up and qualify children for becoming useful and virtuous members of society, is by law invested with the parents' power to administer moderate correction when it shall be just and necessary in order to control stubbornness, quicken diligence, and reform bad habits,⁵ but chastisement of a pupil for breaking an unreasonable rule renders the teacher

¹ *Cook v. Neely*, 143 Mo. App. 632, 128 S. W. 233.

² *Patterson v. Nutter*, 78 Me. 509, 7 Atl. 273.

³ *Reg. v. Hopley*, 2 Fos. & F. 202; 1 Bl. Com. 453; *Stevens v. Fassett*, 27 Me. 266; *Boyd v. State*, 88 Ala. 169, 7 So. 268; *Quinn v. Nolan*, 7 Ohio Dec. 585; *Cooper v. State*, 8 Baxt. (Tenn.) 324.

⁴ *Lander v. Seaver*, 32 Vt. 114.

⁵ *State v. Pendergrass*, 19 N. C. (2 Dev. & B. L.) 365.

liable in an action of assault and battery.¹ Likewise, in exercising control over a child in matters outside of the jurisdiction of the teacher,² or when the cause for the chastisement is unknown to the pupil.³

It is commonly said that a teacher has the same right to chastise his pupil that a parent has to punish his child. But that is true only in a limited sense. The teacher has no general right of chastisement for all offenses, as has the parent. The teacher's right in that respect is restricted to the limits of his jurisdiction and responsibility as a teacher. But within those limits, a teacher may exact a compliance with all reasonable demands, and may, in a kind and reasonable spirit, inflict corporal punishment upon a pupil for disobedience or other conduct detrimental to the welfare of the school. This punishment should not be either cruel or excessive, and ought always to be apportioned to the gravity of the offense and within the bounds of moderation.

The law has not undertaken to prescribe stated punishments for particular offenses, but has contented itself with the general grant of the power of moderate correction, and has confined the graduation of punishments, within the limits of this grant, to the discretion of the teacher.⁴ Therefore when complaint is made, the calm and honest judgment of the teacher as to what the situation required should have weight, as

¹ *State v. Vanderbilt*, 116 Ind. 11, 18 N. E. 266.

² *Morrow v. Wood*, 35 Wis. 58.

³ *State v. Mizner*, 50 Iowa 145.

⁴ *State v. Pendergrass*, 19 N. C. (2 Dev. & L.) 365.

in the case of a parent under similar circumstances, and where no improper weapon has been employed, the presumption will be, until the contrary is made to appear, that what was done was rightly done. Subject to these general rules, the teacher's right to inflict, and the duty of inflicting corporal punishment upon a pupil, and the reasonableness of such a punishment when imposed, must be judged of by the varying circumstances of each particular case.¹

The better doctrine of the adjudged cases, therefore, is, that the teacher is within reasonable bounds the substitute for the parent, exercising his delegated authority. He is vested with the power to administer moderate correction, with a proper instrument, in cases of misconduct, which ought to have some reference to the character of the offense, the sex, age, size, and physical strength of the pupil. When the teacher keeps within this circumscribed sphere of his authority the degree of correction must be left to his discretion, as it is to that of the parent, under like circumstances. Within this limit he has the authority to determine the gravity or heinousness of the offense, and to mete out to the offender the punishment which he thinks his conduct justly merits, and hence the parent or

¹ 1 Bishop Cr. L. sec. 886; *Vanvactor v. State*, 113 Ind. 276, 15 N. E. 341; *Danenhover v. State*, 69 Ind. 295. The punishment of a pupil with undue severity, or with an improper instrument such as a hickory stick, three-fourths of an inch in diameter at one end and one-half an inch at the other and fifteen or eighteen inches long, used in striking the palm of the hand of a pupil from eight to twelve strokes, by which the boy's hand was disabled for some days, is unwarrantable and may serve in some degree to indicate the *animus* of the teacher; Decision of Supt. of Iowa, June 6, 1874.

teacher is often said, *pro hac vice*, to exercise judicial functions.¹

To support a charge of assault and battery against a teacher for improper chastisement, it is necessary to show that the act complained of was intentionally committed. But the intent may be inferred from the unreasonableness of the method adopted, or in the excessive force employed, and the burden of proving such unreasonableness or excess rests upon the prosecution. In such a case, in addition to the general presumption of his innocence, the teacher has also the presumption of having done his duty, in support of his defense.²

The legitimate object of chastisement is to inflict punishment by the pain which it causes as well as by the degradation which it implies. It does not, therefore, necessarily follow because pain is produced, or some abrasion of the skin results from the effect of a switch, that a chastisement was either cruel or excessive. And a mere error of judgment, where the motive is proper, will not make a case of assault and battery.³

The legal objects and purposes of punishment in school are threefold: *first*, reformation, and the highest good of the pupil; *second*, the enforcement and maintenance of correct discipline in the school; and, *third*, as an example to like evil-doers. And in no case can

¹ *Boyd v. State*, 88 Ala. 169, 7 So. 268.

² *Com. v. Randall*, 4 Gray (Mass.) 36; *Lander v. Seaver*, 32 Vt. 114; *State v. Alford*, 68 N. C. 322; *Com. v. Seed*, 5 Pa. L. Jour. 78.

³ *Vanvactor v. State*, 113 Ind. 276, 15 N. E. 341.

the punishment be justifiable unless it is inflicted for some definite offense or offenses which the pupil has committed, and the pupil, as a reasonable being understands or should understand from what occurred, for what the punishment is inflicted.¹

A teacher is liable if, in correcting or disciplining a pupil, he acts maliciously or inflicts a permanent injury, but he has the authority to correct his pupil when he is disobedient or inattentive to his duties, and any act done in the exercise of this authority and not prompted by malice is not actionable, though it may cause permanent injury, unless a person of ordinary prudence could reasonably foresee that a permanent injury of some kind would naturally or probably result from the act.

There is a distinction between the case of an injury inflicted in the performance of a lawful act and one in which the act causing the injury is in itself unlawful or is, at least, a willful wrong. In the latter case the defendant is liable for any consequence that may flow from his act as the proximate cause thereof, whether he could foresee or anticipate it or not; but when the act is lawful, the liability depends not upon the particular consequence or result that may flow from it, but upon the ability of a prudent man, in the exercise of ordinary care, to foresee that injury or damage will naturally or probably be the result of his act. In the one case he is presumed to intend the consequence of his unlawful act, but in the other, while the act is

¹ *State v. Mizner*, 50 Iowa 145.

lawful, it must be performed in a careful manner, otherwise it becomes unlawful, if a prudent man in the exercise of proper care can foresee that it will naturally or probably cause injury to another, though it is not necessary that the evil result should be, in form foreseen. The commission of an act specifically forbidden by law, or the omission or failure to perform any duty specifically imposed by law, is generally equivalent to an act done with intent to cause wrongful injury.

It is not easy to state with precision the power which the law grants to schoolmasters and teachers, with respect to the correction of their pupils. It is analogous to that which belongs to parents, and the authority of the teacher is regarded as a delegation of parental authority. One of the most sacred duties of parents is to train up and qualify their children for becoming useful and virtuous members of society. This duty cannot be performed without the ability to command obedience, to control stubbornness, to quicken diligence, and to reform bad habits, and to enable the teacher to exercise this salutary sway, he is armed with the power to administer moderate correction when he shall believe it to be just and necessary. The teacher as the substitute for the parent, is charged in part with the performance of his duties, and in the exercise of these delegated duties is invested with his power.¹

If a teacher attempts, even without malice, to cor-

¹ *State v. Pendergrass*, 19 N. C. (2 Dev. & B. L.) 365; *State v. Burton*, 45 Wis. 150.

rect a pupil in a wrongful manner, he is liable for any permanent injury inflicted whether or not he was able to foresee that the particular injury would be the natural and probable consequence of his act. But he is not liable for permanent injury inflicted without malice, in proper method of correction, where a permanent injury cannot be reasonably foreseen as a result of the act. And, where a teacher, to attract the attention of a pupil, threw a pencil at him to the injury of an eye, it was held that the teacher would be liable if he did not act with ordinary care.¹

But it is not necessary that a permanent injury be inflicted, to render the teacher civilly and criminally liable for excessive and immoderate punishment. Thus, any punishment with a rod, which leaves marks or welts on the person of the pupil for two months, or for a much shorter period thereafter, is immoderate and excessive.² A teacher may moderately chastise a pupil for infraction of a rule prohibiting quarrelling and fighting, although the act was done away from the school grounds, and outside of school hours.³

There is no doubt a well-founded and growing sentiment against the infliction of corporal punishment in the public schools. Humanity is against it except in extreme cases, and the tendency of the courts seems to be that if a teacher immoderately

¹ *Drum v. Miller*, 135 N. C. 204, 47 S. E. 421.

² *State v. Mizner*, 50 Iowa 145. Compare, *Fox v. People*, 84 Ill. App. 270; *Heritage v. Dodge*, 64 N. H. 297, 9 Atl. 722; *Com. v. Seed*, 5 Pa. L. Jour. 78.

³ *Deskins v. Gose*, 85 Mo. 484; *Hutton v. State*, 23 Tex. App. 386, 5 S.W. 122.

and unreasonably punishes a pupil he is liable for the injury inflicted regardless of the motive which prompted the chastisement, — that is to say, the non-existence of malice is not material.¹ Many school committees now prohibit corporal punishment in any form, and by statute in New Jersey the infliction of corporal punishment is entirely prohibited.²

§ 71. Right to Expel Pupil.

The teacher has a right to suspend or expel a pupil from a public school, unless deprived of that power by the affirmative action of the school board. While the principal or teacher in charge of a public school is subordinate to the school board, or board of education of his district or city, and must enforce rules and regulations adopted by the board for the government of the school, and execute all its lawful orders in that behalf, he does not derive all his power and authority in the school, and over his pupils, from the affirmative action of the board. He stands, for the time being, *in loco parentis* to his pupils, and because of that relation he must necessarily exercise authority over them in many things concerning which the board may have remained silent.

In the school, as in the family, there exists on the part of the pupils the obligations of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils, and fidelity to duty.

¹ Haycraft v. Grigsby, 80 Mo. App. 354. Compare, Lander v. Seaver, 32 Vt. 114.

² 3 N. J. Stats. p. 3049, sec. 202.

These obligations are inherent in any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law, and is subject to it, whether it has or has not been re-enacted by the district board in the form of written rules and regulations. Indeed, it would seem impossible to frame rules which would cover all cases of insubordination and all acts of vicious tendency which the teacher is liable to encounter daily and hourly.

The teacher is responsible for the discipline of his school, and for the progress, conduct and deportment of his pupils, and it is his imperative duty to maintain good order, and to require of his pupils a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his lawful commands, and for this reason the law gives him the power, in proper cases, to inflict corporal punishment on refractory pupils.

But there are cases of misconduct for which such punishment is an inadequate remedy. In general, no doubt a teacher should report a case of that kind to the proper board for its action in the first instance if no delay will necessarily result from that course prejudicial to the best interests of the school. But the conduct of the recusant pupil may be such that his presence in the school for a day, or an hour, may be disastrous to the discipline of the school and even to the morals of the other pupils. In such a case it seems absolutely essential to the welfare of the school

that the teacher should have the power to suspend the offender at once from the privileges of the school, and he must necessarily decide for himself whether the case requires that remedy. If he suspends the pupil he should promptly report his action, with his reasons therefor, to the proper board.

It will seldom be necessary for the teacher in charge of a district school to exercise this power of suspension or expulsion, because usually he can communicate readily with the district board, and obtain the direction and order of the board in the matter. But where the government of a public school is vested in a board of education, with a more numerous membership than district boards, and which holds stated meetings for the transaction of business, the facilities for speedy communication with the board may be greatly decreased and more time must usually elapse before the board can act upon a complaint of the teacher. In those schools the occasions which require the action of the teacher in the first instance will occur more frequently than in the district schools where the board is more easily accessible; but the rule is the same irrespective of the accessibility of the controlling board.¹

¹ *Burpee v. Burton*, 45 Wis. 150.

CHAPTER VI

OF PUPILS

§ 72. Rights and Duties.

Although at common law the child had no legal right to an education,¹ modern statutes in the nature of compulsory education laws give to every child a right to attend the public schools.

This right, however, is not an unqualified right but is subject to such reasonable regulations as to numbers and qualifications of pupils to be admitted to the respective schools, and as to other school matters, as the school authorities shall from time to time prescribe.²

Where the statute of the State, enacted in obedience to the special command of the constitution, provides that the legislature shall provide a system of public schools, by which a school shall be kept up and supported in each district, the advantage or benefit thereby vouchsafed to each child is one derived and secured to it under the highest sanction of positive law, and is a right just as distinctive as a vested right in property, and as such is entitled to protection by all the guarantees by which other legal rights are protected and secured

¹ See § 7, *supra*.

² *Alvord v. Chester*, 180 Mass. 20, 61 N. E. 263.

to the possessor.¹ But the privilege accorded by the law of a State to the youth of the State, of attending the public schools maintained at the expense of the State, is not a privilege or immunity appertaining to a citizen of the United States as such ; and it necessarily follows that no person can demand admission as a pupil to any such school because of the mere status of citizenship.²

The exclusion of a child from a school gives no right of action against the school committee, inasmuch as such officers are not ordinarily accountable to individuals for the manner in which they exercise their public functions, unless some private right is violated, which the individual holds as property, separately from the community at large. The right to attend school is not such, but is a political right belonging to such aggrieved party as a member of the community, and in common with all others of the same community.³

The use of pupils of a public school as subjects of practice in teaching by the better qualified students as teachers under supervision of regular teachers has been held not an invasion of the pupils' legal rights,⁴ and pupils over twenty-one years of age who are regularly accepted pupils in a public school are under the same restrictions and liabilities as if they were under that age.⁵

¹ *Ward v. Flood*, 48 Cal. 36.

² *Ibid.*

³ *Learock v. Putnam*, 111 Mass. 499.

⁴ *Spedden v. Board, &c.*, 74 W. Va. 181, 81 S. E. 724.

⁵ *Stevens v. Fassett*, 27 Me. 266.

§ 73. Admission.

The authorities of the public schools under the law owe a duty to the public to admit and keep within the schools all children who come within the lawfully prescribed rules and whose parents or guardians see fit to enter them. When, therefore, such school authorities willfully, wantonly, and maliciously refuse to admit such children, a public wrong is committed, which may be remedied, so far as the public is concerned, by indictment for malpractice, or other appropriate remedy. Out of this breach of duty damage arises to the parent, as well as to the child. The parent, therefore, has the right to appeal to the courts to compel the child to be admitted or reinstated, as the case may be, and also to appeal to the courts by his action for damages for the amount which he would be required to expend in the education of his child. The child would also have a right against the individuals thus wantonly and maliciously depriving him of any benefit which is secured to him by the law in the event the parent sees proper to enter him in the school.¹

When the law requires one to do an act for the benefit of another, or to forbear the doing of that which may injure another, though no action be given in express terms, upon the accrual of damage the party may recover. It follows, therefore, that when a parent enters his child in the public schools, the law requires that the authorities of the school shall do each and every act required by the law which will be for the

¹ Broom's Common Law, 9th London ed., 757-759.

benefit of the child, and also that the authorities shall refrain from doing any act which will injure the child. If the school authorities wantonly and maliciously refuse to discharge the duty thus imposed upon them, the child will have a right of action against the individuals who commit the wrongful act.

Enumeration is not necessary to attach children to a school district inasmuch as it is residence and not enumeration which fixes the attachment.¹ And persons residing on lands purchased by or ceded to the United States for navy yards, forts, and arsenals, and where there is no other reservation of jurisdiction to the State than that of a right to serve civil and criminal process on such lands, are not entitled to the benefit of the common schools for their children, in the towns in which such lands are situated.²

Where the managers of a charitable institution are provided by the State with funds for the education of children who become inmates, if they neglect to provide educational facilities the inmates are not entitled to free admission to the schools of the district in which the institution is located.³ But the minor children of paupers, supported at the county poor farm, have the right of admission into the public schools of the district in which the poor farm is located;⁴ although

¹ *Greenlee v. Newton, &c.*, 104 N. E. (Ind.) 610. A child is entitled to school privileges in a district if he is residing there; *Yale v. School District*, 59 Conn. 491, 22 Atl. 295.

² Opinion of Justices, 1 Metc. (Mass.) 580.

³ *Com. v. Directors, &c.*, 164 Pa. St. 607, 30 Atl. 509; *State v. Directors, &c.*, 10 Ohio St. 448.

⁴ *School District v. Pollard*, 55 N. H. 503.

children kept in a private institution chartered for their support and education, and exempt from taxation, are not entitled to admission into the district schools in which the institution exists.¹

Where an orphan child is placed by a charitable society to board in the family of a resident of a school district, and the child is treated as a member of that family, such child is a resident of the school district and as such is entitled to the school privileges of other residents.² And if orphan children or children of a non-resident, of lawful school age, are residing within a school district in the care of relatives or strangers who care for them and control them, such children are entitled to attend the public schools of that district.³

If a pupil is refused readmission into a public school, *mandamus* and not injunction is the proper remedy to procure reinstatement.⁴

§ 74. School Age.

A constitutional provision requiring the legislature to provide for the instruction of children between the ages of five and eighteen years, is not such a limitation as will prevent the legislature from providing for the instruction of children between the ages of five and twenty years.⁵

¹ *Lake Farm v. Kalamazoo*, 179 Mich. 171, 146 N. W. 115.

² *People v. Hendrickson*, 125 N. Y. App. Div. 256, 109 N. Y. S. 403.

³ *Muskegon v. Wright*, 176 Mich. 6, 141 N. W. 866. But see, *Black v. Graham*, 238 Pa. St. 381, 86 Atl. 266.

⁴ *McCaskill v. Bower*, 126 Ga. 341, 54 S. E. 942.

⁵ *In re Newark, &c.*, 70 Atl. (N. J.) 881.

A rule, the effect of which is to exclude from school a child who becomes of school age a few days after the beginning of the fall term, until the beginning of the following spring term, is not reasonable.¹

§ 75. Non-Residents.

A constitutional provision that district schools shall be free and without charges for tuition, to all between certain ages, applies only to the children of each particular district.²

Where the statute provides that the local board may admit non-resident pupils to the public schools of their district, on such terms as they may prescribe, the board has no right to admit such non-resident pupils at a less rate per scholar than the inhabitants of the district pay by taxation for their children, and have no right to admit them at all to the exclusion of resident children who otherwise would attend.³ And where a rate is fixed by recorded resolution of the school board, for the tuition of a non-resident pupil, it is not necessary to the liability of a parent that he be notified of such resolution.⁴

Where a district has no right to receive into its schools the children whose parent or guardian resides in another State, a contract for the tuition of such children made between the authorities and parents or guardians of such children cannot be enforced.⁵

¹ Board, &c., v. Bolton, 85 Ill. App. 92.

² State v. Joint School District, 65 Wis. 631, 27 N. W. 829.

³ Irvin v. Gregory, 86 Ga. 605, 13 S. E. 120.

⁴ School District v. Yerrington, 108 Mich. 414, 66 N. W. 324.

⁵ Haverhill v. Gale, 103 Mass. 104.

A previous arrangement is necessary to support the claim of one district against another for tuition given to children of that district where the statute authorizes the board of education to make such contracts, mere acquiescence not being sufficient.¹

§ 76. Tuition Fees.

A tuition fee may be exacted from those who are over the school age, and also from non-residents who attend a public school, but a fee may not be exacted from residents entitled to attend the public schools, for manual training given as a part of the curriculum therein.²

Temporary residence within a school district during the scholastic year, for the primary purpose of attending the public school therein, debars one from receiving free tuition.³ But a foster parent has a right to have his child, who has not been legally adopted, attend the public schools of the district in which he lives without cost for tuition.⁴

§ 77. Control of Pupils.

The power of school authorities over pupils, except for the parents' right of control, extends to all acts detrimental to the best interests of the school, whether committed in school hours or after the pupils return

¹ *Board, &c., v. Board, &c.*, 50 Ohio St. 439, 38 N. E. 23; *Cascade, &c., v. Lewis, &c.*, 43 Pa. St. 318.

² *Maxcy v. Oshkosh*, 144 Wis. 238, 128 N. W. 899.

³ *State v. Board, &c.*, 96 Wis. 95, 71 N. W. 123; *Barnard v. Matherly*, 84 Mo. App. 140.

⁴ *McNish v. State*, 74 Neb. 261, 104 N. W. 186.

home.¹ And while school authorities should be upheld in their control and regulation of the school system, their authority is not unlimited but must be exercised to further the best interests of the pupils with due regard to the natural and legal rights of parents.²

Under the doctrine of *parens patriæ* the State, as sovereign, has the power of guardianship over persons under disabilities.³ For this reason, the school directors, as representatives of the government, have broader powers of control over minor pupils, they being not *sui juris*, than courts have over persons who are *sui juris* in case of contempt of court committed outside the presence of the court and not in reference to a case pending therein. (So we find it held that the school authorities have the power to suspend a pupil for an offense committed outside of school hours and not in the presence of the teacher, which has a direct and immediate tendency to influence the conduct of other pupils while in the school-room, to set at naught the proper discipline of the school, to impair the authority of the teachers and to bring them into ridicule and contempt,⁴ as, for example, the publication in a local newspaper of a poem satirizing

¹ *Gott v. Berea College*, 156 Ky. 376, 161 S. W. 204; *State v. District Board, &c.*, 135 Wis. 619, 116 N. W. 232.

² *State v. Ferguson*, 95 Neb. 63, 144 N. W. 1039.

³ *Fontain v. Ravenel*, 17 How. (U. S.) 393, 15 L. ed. 80.

⁴ *State v. District Board, &c.*, 135 Wis. 619, 116 N. W. 232, 67 Cent. L. J. 214, in note to which see an interesting discussion of this case; *Deskins v. Gose*, 85 Mo. 485; *Hutton v. State*, 23 Tex. App. 386, 5 S. W. 122; *Wayland v. Hughes*, 43 Wash. 441, 86 Pac. 642; *Kinzer v. Directors, &c.*, 129 Iowa 441, 105 N. W. 686.

the regulations of the school. And the suspension of pupils for such cause until they shall apologize is not an abuse of the discretion of the school authorities.¹ Such power is essential to the preservation of order, decency, decorum, and good government in the public schools.

A member of a district school committee has a right to eject from the schoolhouse a pupil who uses profane language and refuses to desist therefrom when requested, if no unnecessary force is used to that end.²

§ 78. Exclusion, Suspension and Expulsion.

A child at common law was at the mercy of an arbitrary parent whether he should be placed at school or not, and so he is at the mercy of an arbitrary parent who may so conduct himself as to deprive the child of the benefits to be derived from education. A child who is entered at a public school must be required to conduct himself so as not to interfere with the discipline of the school, and, if this duty is incumbent upon the child, it would seem that for a stronger reason a similar duty rests upon the parent who is the real beneficiary of the system.

Public education which fails to instil in the youthful mind and heart obedience to authority, both public and private, would be more of a curse than a blessing, and the parent who in the schoolroom, or in the vicinity of the school, in the presence of the children so acts as to create the impression that the true way of life

¹ *State v. District Board, &c.*, 135 Wis. 619, 116 N. W. 232.

² *Peck v. Smith*, 41 Conn. 442.

is lawlessness and utter disregard of the rights of other people should not only receive the punishment which the statutes of the State might inflict upon him, but should also be deprived of the benefit of the fund which is provided to pay the expenses which natural and moral duty would otherwise require him to bear.

But this misconduct on the part of the parent does not apply to matters extraneous to the discipline and welfare of the school and of the pupils, and, as the right of the child to attend a public school is dependent on the good conduct of the parent as well as of the child, both must submit to the reasonable rules and regulations of the school, and the parent must so conduct himself as not to destroy the influence and authority of the school management over the children whenever he comes in contact with the school authorities, whether commissioners, officers, or teachers, under such circumstances that his conduct would be likely to influence the conduct of his children.

The schoolmaster has always stood in *loco parentis*¹ for certain purposes, and, notwithstanding the change from private schools into public schools, the schoolmaster of the present is and ought to be in the place of a parent in a great many particulars. It is therefore a duty which the parent owes not only to the master but to the pupil himself that he who stands in the parents' shoes should not be impeded in discharging a duty which the parent has voluntarily placed upon him. Therefore, it necessarily follows

¹ *Burfee v. Burton*, 45 Wis. 150.

that when the parent has taken advantage of the school fund to discharge the burden which he would otherwise have to carry himself, and has placed his child under the control of the schoolmaster thus provided, any misconduct on his part which would interfere with the master in discharging the duty which he owes to such child would result under the present system, as it always did under the old system, in the exclusion of the child from the benefits to be derived from the services of the master.

As the State, for the purpose of aiding a parent in discharging a duty, furnishes a fund to pay the expenses incident to the education of his child, it is the right of the State, through its constituted authorities, to require of the parent that he shall do nothing inconsistent with the peace, good order, and authority of the system which is provided for his benefit.

Therefore, when a parent goes to a schoolroom of a lawfully established public school and in the presence of his or her children and other pupils publicly calls and questions the justice or correctness of a decision made by the teacher in a matter of discipline relating to such children, uses abusive and insulting language to such teacher, and acts in such a manner as to interrupt the exercises of the school, and conducts himself or herself in such manner as to bring the teacher and the discipline of the school into contempt in the eyes of the pupils, it is not only lawful but it is the duty of the authorities of the school in the protection of the teacher whom they have placed on duty, as well as to sustain the character and discipline of the

school, to exclude from the schoolroom the children of such parent, although those thus excluded had not been guilty of a violation of any rule of the school.¹

To justify an exclusion or suspension of a child, it is not absolutely essential that there should be a promulgated rule which has been in terms violated, either by the child or by the parent, for, if the act complained of is such that in itself it would be subversive of the good order and discipline in the school, then the mere failure of the school board to declare that unauthorized which every intelligent man must know could not be allowed, would not prevent the school board from dealing with the person who was guilty of such an act. If, however, the act in itself be harmless but may be harmful on account of the peculiar conditions surrounding the school and its authorities, then there should be a prescribed rule before the act could be complained of as one which would forfeit the right to patronize the school.

It requires no argument to sustain the proposition that an act of disorder in the schoolroom calculated to bring into contempt the authority of the school, as well as the individual in charge for the time being, should be met with such punishment as would be calculated to impress the pupils with the importance of obedience and respect to constituted authority. Children are too much disposed naturally to look with contempt upon authority, especially when represented by a schoolmaster, and parents should be re-

¹ Board, &c., *v.* Purse, 101 Ga. 422, 28 S. E. 896.

strained from encouraging this tendency so dangerous in its nature to private and public welfare.

It is generally conceded that in such a case prosecution under the criminal laws of the State would be justified and proper. This would satisfy the public wrong growing out of a violation of the penal laws; but another, and it may not be unwise to say a greater, wrong has been done than the mere infraction of the criminal law, and the only adequate remedy for such a wrong is one which will cause the parents to understand that that which is given to them for their benefit primarily, and for the benefit of their children secondarily, will be withdrawn from them and their children whenever they do an act which in its effect will be prejudicial to the system which is maintained for their benefit.

A teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school, and a pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher. A teacher may accordingly suspend a pupil from school for refusing to answer a question concerning his conduct.¹

Where a child is excluded unlawfully from a public school the right of action against the public officers is exclusively in the parent when the public officers act without maliciousness or wantonness, but if the act of the public officers in excluding the child is done wantonly or maliciously, the child will have right of

¹ Decision of Supt. of Iowa, June 8, 1874.

action against such officers.¹ A pupil cannot be suspended from the benefits of a public school for an injury to property, unless the injury was caused willfully or maliciously. An injury done by accident, or mere negligence, is not a sufficient cause for such discipline.

It is not necessary that a pupil shall be guilty of a criminal act before he can be suspended or expelled from the school. It is a sufficient cause for such discipline if he be guilty of some grossly willful or malicious act, of detriment to the school. If the act is merely careless or negligent it is not a sufficient cause for such summary punishment. It must be a gross act and not some petty or trivial offense against the rules, or the pupil must have been persistent in disobedience of the proper and reasonable rules and regulations of the school.

As a punishment for a careless act, even though negligent, if it is not willful or malicious, the right of suspension or expulsion from the school does not exist.²

It is neither desirable nor permissible that a child may be excluded from the public schools because by a careless or negligent act, without malice or willfulness, it has injured or broken school property to such an extent that it is beyond its power, or that of its parent or guardian, to make compensation for it. This would be the effect of the rule if carried out, in many cases, and might deprive poor children who are careless, as all children are careless, of the right to a common

¹ *McCormick v. Burt*, 95 Ill. 263; *Dritt v. Snodgrass*, 66 Mo. 286.

² *Holman v. Trustees, &c.*, 77 Mich. 605, 43 N. W. 996.

school education which the laws and policy of our government have guaranteed to them so well that the parent or guardian is punished if he neglects or refuses to give the children under his charge the benefit of the public schools. And a writ of *mandamus* will lie against the school committee to compel them to reinstate a pupil suspended or expelled by their order, for accidentally breaking a window which he refuses to replace, there being no averment that it was done maliciously or willfully.¹

It is unlawful to exclude a pupil from a public school for alleged misconduct without giving the pupil an opportunity which he applies for, to be heard upon the facts involved in the alleged misconduct, and an action will lie against the town for the injury, notwithstanding the fact that the court found he was disrespectful to his teacher.²

The power of exclusion is not a merely arbitrary power, to be exercised without ascertaining the facts. It is settled in the management of the public schools, that when a school committee acts in good faith while exercising the plenary powers conferred upon them by statute, and order the permanent exclusion of a pupil therefrom, no suit can be maintained by him because of their action.³ And a principal of a public

¹ *Holman v. Trustees, &c.*, 77 Mich. 605, 43 N. W. 996.

² *Bishop v. Rowley*, 165 Mass. 460, 43 N. E. 191.

³ *Morrison v. Lawrence*, 186 Mass. 459, 72 N. E. 91; *Watson v. Cambridge*, 157 Mass. 563, 32 N. E. 864; *Bishop v. Rowley*, 165 Mass. 460-462, 43 N. E. 191. By statute in Massachusetts such an order is not considered final, and the pupil, if his parent or guardian desires, must be granted a hearing; otherwise such exclusion

school may refuse admission to a child whose education is insufficient to comply with the requirements of the lowest grade of that school.¹

When the real ground for exclusion from a particular school or grade is failure of the pupil to maintain a proper standard of scholarship and there is offered to the pupil opportunity to attend another school adapted to his ability and accomplishments, there is no illegal exclusion. And when the real ground for exclusion is not misconduct there is no obligation on the part of the school committee to grant a hearing. Failure to attain a given standard of excellence is not misconduct in itself.² And a pupil may be expelled for refusing to attend a class where his work is revised by another student acting as assistant to a teacher.³

A pupil who has been drunk and disorderly in violation of an ordinance of a town, may be suspended from a public school, although the offense was not committed in or about the school or school grounds.⁴ And where a pupil at a pupils' meeting criticises the school authorities, he may be expelled.⁵

Where a teacher refused to receive two boys in school who appeared on a warm day without collars and with the neckbands of their shirts turned under,

becomes unlawful. *Mass. Rev. Laws. ch. 44, sec. 8*; see also, *Jones v. Fitchburg*, 211 *Mass.* 66, 97 *N. E.* 612.

¹ *Ward v. Flood*, 48 *Cal.* 36.

² *Barnard v. Shelburne*, 216 *Mass.* 19, 102 *N. E.* 1095.

³ *Wulff v. Wakefield*, 221 *Mass.* 427, 109 *N. E.* 358.

⁴ *Douglas v. Campbell*, 89 *Ark.* 254, 116 *S. W.* 211.

⁵ *Wooster v. Sunderland*, — *Cal. App.*, —, 148 *Pac.* 959.

the State Board of Education held that such exclusion was improper.¹

Under a statute which provides that "a child unlawfully excluded from any public school shall recover damages therefor in an action of tort, to be brought in the name of such child by his guardian or next friend against the city or town by which such school is supported" no cause of action arises unless the exclusion is by the proper authorities who represent the city or town.²

A teacher has no authority to exclude a child from school, unless the act is in an emergency or under the order of the school committee. The law vests in the school committee the charge and superintendence of the schools, and they alone have the right to exclude any child from school. If a teacher sends a child home from school, without evidence of authority to do so by the school committee, an appeal to the school committee and confirmation by them is necessary to perfect a right of action.³ And when a teacher sends a child home as a punishment, it is not an exclusion from the school for which the parent may sue the city or town. To adopt such a rule as law would lead to vexatious litigation and impair the discipline and usefulness of the schools.⁴

Where a school board illegally orders a change in

¹ N. J. State Board of Education, Feb. 5, 1916.

² *Davis v. Boston*, 133 Mass. 103.

³ *Ibid.*

⁴ *Spear v. Cummings*, 23 Pick. (Mass.) 224; *Sherman v. Charlestown*, 8 Cush. (Mass.) 160; *Hodgkins v. Rockport*, 105 Mass. 475; *Learock v. Putnam*, 111 Mass. 499; *Davis v. Boston*, 133 Mass. 103.

text-books, a pupil not complying with a regulation pertaining thereto cannot be legally excluded from the school and if excluded may obtain reinstatement by *mandamus*.¹ And if a parent sustains some direct pecuniary injury by reason of an unlawful suspension of his child from a public school, he may maintain an action for damages therefor; otherwise his remedy is by *mandamus* to compel reinstatement.²

A statutory right to an opportunity for an expelled pupil to be heard before the school committee, means a full opportunity unrestricted by procedure that will amount to coercion of witnesses, or suppression of relevant evidence. But if a school committee acts in good faith in determining the facts in a particular case, its decision cannot be revised by the courts.³ If a hearing in regard to the exclusion of a pupil is in good faith, it need not be conducted with the formality of a trial in court, and a material mistake innocently made by a school committee in conducting a hearing will not make the exclusion unlawful. And where legislation gives a remedy to a child "unlawfully excluded" from a public school, the city or town becomes liable for the possible arbitrary and willfully unjust action of a school committee in excluding a child from school.⁴

When a pupil has been expelled from a public school, a court will not review the decision of the school

¹ *Harley v. Lindemann*, 129 Wis. 514, 109 N. W. 570.

² *Douglas v. Campbell*, 89 Ark. 254, 116 S. W. 211.

³ *Bishop v. Rowley*, 165 Mass. 460, 43 N. E. 191.

⁴ *Morrison v. Lawrence*, 181 Mass. 127, 63 N. E. 400.

authorities unless fraud, corruption or gross injustice is shown.¹

§ 79. Health Regulations. — Vaccination.

In the enforcement of health regulations the school authorities may employ a suitable person to ascertain the health of pupils in attendance at a public school.² And a school board has the power to adopt reasonable health regulations for the benefit of the pupils and the general public. To that end they may exclude from the schools those who do not comply with a regulation requiring a certificate of vaccination as a condition of attendance.³ This statement of the law, however, does not hold the power to compel vaccination, but merely the right to prohibit attendance until the regulation relating to vaccination is complied with.

A board of health may make a valid resolution that pupils not producing evidence of successful vaccination shall be excluded from the public schools.⁴ Such law is a valid exercise of the police power of the State,⁵

¹ *Smith v. Board, &c.*, 182 Ill. App. 342.

² *State v. Brown*, 112 Minn. 370, 128 N. W. 294.

³ *Duffield v. Williamsport*, 162 Pa. St. 476, 29 Atl. 742; *In re Rebenack*, 62 Mo. App. 8; *Abeel v. Clark*, 84 Cal. 226, 24 Pac. 383; *Bissell v. Davidson*, 65 Conn. 185, 32 Atl. 348; *In re Walters*, 84 Hun (N. Y.) 457, 32 N. Y. S. 322.

⁴ *People v. Board, &c.*, 177 Ill. 572, 52 N. E. 850; *State v. Zimmerman*, 86 Minn. 353, 90 N. W. 783; *Viemeister v. White*, 179 N. Y. 235, 72 N. E. 97; *Field v. Robinson*, 198 Pa. St. 638, 48 Atl. 873; *Stull v. Reber*, 215 Pa. St. 156, 64 Atl. 419. But see, *Osborn v. Russell*, 64 Kan. 507, 68 Pac. 60.

⁵ *French v. Davidson*, 143 Cal. 658, 77 Pac. 663; *Stull v. Reber*, 215 Pa. St. 156, 64 Atl. 419; *State v. Board, &c.*, 21 Utah 401, 60 Pac. 1013. *Contra*, on ground that there must be statutory author-

and is mandatory, not merely directory, nor is it repealed by a compulsory education act.¹

When the statute requires vaccination as a condition precedent to attendance at a public school a school committee has a right to make a rule that all pupils not vaccinated shall be excluded from the public schools, even though there is no case of smallpox in the town and no epidemic threatened.²

An exception to a statute requiring successful vaccination as a condition precedent to admission into the public schools is to be presumed in favor of a child who by either mental or physical reasons is not a fit subject for vaccination.³ But it has been held that the decision of the school committee of a city or town, acting in good faith in the management of the schools, upon matters of fact directly affecting the good order and discipline of the schools, is final so far as it relates to the rights of pupils to enjoy the privileges of the school.⁴ So where the statute provides that "a child who has not been vaccinated shall not be admitted to a public school except upon presentation of a certificate signed by a regular practising physician that he is not a fit subject for vaccination" the school

ity: *State v. Burdge*, 95 Wis. 390, 70 N. W. 347; *Mathews v. Board, &c.*, 127 Mich. 530, 86 N. W. 1036.

¹ *State Board of Health v. Board, &c.*, 13 Cal. App. 514, 110 Pac. 137.

² *Bissell v. Davison*, 65 Conn. 183, 32 Atl. 348.

³ *State v. Shorrock*, 55 Wash. 208, 104 Pac. 214.

⁴ *Hammond v. Hyde Park*, 195 Mass. 29, 80 N. E. 650; *Watson v. Cambridge*, 157 Mass. 561, 32 N. E. 864; *Hodgkins v. Rockport*, 105 Mass. 475; *Spiller v. Woburn*, 12 Allen (Mass.) 127; *Alvord v. Chester*, 180 Mass. 20, 61 N. E. 263.

committee consistently therewith may expel from school during an epidemic of smallpox and until the crisis has passed, a child presenting such certificate, who under normal conditions would be entitled to attend the public school, provided such expulsion is done in good faith.¹

The rule of a school board requiring that an applicant for admission shall show a reputable physician's certificate of successful vaccination as a condition precedent to admission is not unreasonable,² nor is it unconstitutional.³ In the absence of direct and specific legislation,⁴ it has been held that without an immediate, present necessity, occasioned by a reasonable, well-founded belief that smallpox is prevalent in the community, or is approaching that vicinity, school directors have no right to make a rule excluding pupils from the public schools for failure to be vaccinated.⁵ And it has been held that without authority of statute pupils may not be excluded for non-vaccination unless an epidemic is actually pending.⁶

Where the school authorities make a rule excluding from the schools all children who have not been vac-

¹ *Hammond v. Hyde Park*, 195 Mass. 29, 80 N. E. 650.

² *Auten v. Board, &c.*, 83 Ark. 431, 104. S. W. 130.

³ *State v. Board, &c.*, 76 Ohio St. 297, 81 N. E. 568.

⁴ *State v. Turney*, 31 Ohio Cir. Ct. 222.

⁵ *School Directors v. Breen*, 60 Ill. App. 201.

⁶ *State v. Turney*, 31 Ohio Cir. Ct. 222. May exclude when epidemic is threatened: *Blue v. Beach*, 155 Ind. 121, 56 N. E. 89; *Hutchins v. Durham*, 137 N. C. 68, 49 S. E. 46. May not exclude unless epidemic is threatened: *Potts v. Breen*, 167 Ill. 67, 47 N. E. 81; *People v. Board, &c.*, 177 Ill. 572, 52 N. E. 850; *State v. Burdge*, 95 Wis. 390, 70 N. W. 343.

inated, a parent who refuses to allow his child to be vaccinated and is therefore unable to send the child to school, is not guilty of a violation of a compulsory attendance law.¹ But it has been held that a compulsory education law may not be avoided by refusing to comply with a rule requiring vaccination as a condition precedent to attending a public school, unless such child is sent to some other school.² And private instruction at home is insufficient.³

Where the statute provides that persons in charge of the public schools shall refuse admission to children except upon certificates that they have been successfully vaccinated, or have had smallpox, *mandamus* will not lie to compel school directors to exclude a child who has not complied therewith, inasmuch as that duty is imposed upon the superintendents, principals, and teachers who have charge of the schools.⁴

An order of a school board, excluding from the public schools those pupils who, not having been vaccinated, refuse to be vaccinated, does not deprive them of liberty without due process of law, nor is such an unreasonable search and seizure.⁵ And the passage of an ordinance making vaccination a condition precedent to the right of education is not within the general

¹ O'Bannon v. Cole, 220 Mo. 697, 119 S. W. 424; State v. Shorrock, 55 Wash. 208, 104 Pac. 214; State v. Turney, 31 Ohio Cir. Ct. 222.

² People v. Ekerold, 211 N. Y. 386, 105 N. E. 670.

³ State v. Connort, 69 Wash. 361, 124 Pac. 910. But see, State v. Peterman, 32 Ind. App. 665, 70 N.E. 550.

⁴ Com. v. Rowe, 218 Pa. St. 168, 67 Atl. 56.

⁵ McSween v. Board, &c., 129 S. W. (Tex.) 206.

police powers of a city authorizing the passing of ordinances for the promotion of health and suppression of disease.¹ Nor is a vaccination rule invalid because it does not specify when it will expire.²

§ 80. Reinstatement.

A pupil who is improperly excluded from the public schools sustains an injury which the law will redress. But gross vulgarity and profanity on the part of a pupil before the school committee may cause him to forfeit his right to reinstatement.³

Where application is made for reinstatement of a pupil in a school, the application is usually made in the name and behalf of the parent or guardian.⁴ And where a parent's reasonable request that a child be excused from taking a certain study is improperly denied, and the child is suspended or expelled for refusal to take such study, a *mandamus* will lie to compel reinstatement.⁵

A school board cannot require a pupil to pay a sum of money as a condition precedent to reinstatement in the public schools after suspension or expulsion therefrom for misconduct.⁶

¹ *People v. Board, &c.*, 234 Ill. 422, 84 N. E. 1046.

² *Zucht v. San Antonio, &c.*, 170 S. W. (Tex.) 840.

³ *Board, &c., v. Helston*, 32 Ill. App. 300; *State v. District Board, &c.*, 135 Wis. 619, 116 N. W. 232; *Cross v. Walton, &c.*, 129 Ky. 35, 110 S. W. 346.

⁴ *Rulison v. Post*, 79 Ill. 567; *State v. Board, &c.*, 63 Wis. 234, 23 N. W. 102; *Holman v. Trustees, &c.*, 77 Mich. 605, 43 N. W. 996; *Binde v. Klinge*, 30 Mo. App. 285; *Trustees v. People*, 87 Ill. 303.

⁵ *State v. Ferguson*, 95 Neb. 63, 144 N. W. 1039.

⁶ *State v. District Board, &c.*, 135 Wis. 619, 116 N. W. 232.

An order expelling a pupil must be from an existing school, and inasmuch as the pupil's relationship with the school is severed when the school year has closed and vacation has begun there exists on the part of the school authorities no right, for want of jurisdiction, to expel a pupil after the termination of the school year and during the vacation season.¹

§ 81. Diplomas.

A graduate is one who has honorably passed through the prescribed course of study and received a certificate or diploma to that effect. Mere permission to one to take part in the ceremonials of graduation with the understanding that it was to save him and his family from humiliation, does not entitle him to a certificate of graduation. And it is the certificate, not the taking part in a public performance, which attests the fact that he has passed the prescribed course of study and is otherwise qualified according to the rules of the school. If the school board with knowledge that one has not passed the prescribed course, should, out of favoritism, grant him a certificate, it might be canceled. So also if issued through mistake.

A pupil might be graduated without taking part in any ceremonies, but he cannot be a graduate, no matter what the ceremonies, unless he passed his examinations and received his diploma. The granting of a certificate is the one act in the ceremonies of graduation which has a legal effect. The symbolic

¹ Decision of Supt. of Iowa, March 18, 1899.

delivery of a diploma by the presentation of a dummy is of no legal effect.¹

But if a student's record has been determined to be satisfactory, and the duty of giving a certificate has become merely ministerial, he is entitled to a *mandamus* to compel the school authorities to graduate him.² The determination of the pupil's record, however, rests in the discretion of the school board, and a *mandamus* will not lie to control the exercise of such discretionary power.³

The graduating exercises of a school are not a part of the course of study therein, and a school board has no authority to refuse to issue a diploma to a pupil, who has properly and honorably completed the prescribed course of study, because he fails to prepare a valedictory address for the purpose of graduation exercises.⁴

§ 82. Separate Schools.

The Fourteenth Amendment of the Federal Constitution provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor deny to any person within its jurisdiction the equal protection of the laws, and this Amendment has a direct bearing on the power of school authorities in their treatment of

¹ Sweitzer v. Fisher, — Iowa, —, 154 N. W. 465. See also, Joliet v. Werner, 166 Ill. 34, 46 N. E. 780.

² Keller v. Hewitt, 109 Cal. 146, 41 Pac. 871; State v. Lincoln Medical College, 81 Neb. 533, 116 N. W. 294.

³ People v. N. Y. Law School, 68 Hun (N. Y.) 118, 22 N. Y. S. 663; Niles v. Orange Training School, 63 N. J. L. 528, 42 Atl. 846.

⁴ Decision of State Com'r of N. J., May 27, 1912.

colored pupils. This constitutional provision has been held to give the colored people rights of equality with those of the white race, but does not guarantee to the colored race a community of rights.¹ Therefore, a State has the right to establish and maintain separate schools for colored pupils, provided such schools are on a plane of equality with those maintained for pupils of the white race,² although it would be a denial to them of the equal protection of the laws guaranteed by the Fourteenth Amendment if they were excluded entirely from the public schools.³

The constitutionality of laws providing for separate schools for colored pupils does not arise under the "privileges or immunities" clause of the Constitution of the United States, but does arise under the clause of the Fourteenth Amendment prohibiting any State from the denial "to any person within its jurisdiction the equal protection of the laws." Therefore, if the legislature of a State chooses to provide separate schools for colored pupils, it may do so provided such colored schools afford advantages in all respects substantially equal to those furnished by the schools for white

¹ *Younger v. Judah*, 111 Mo. 303, 19 S. W. 1109; *People v. Gallagher*, 93 N. Y. 438.

² *U. S. v. Buntin*, 10 Fed. 730; *Union County v. Robinson*, 27 Ark. 116; *Ward v. Flood*, 48 Cal. 56; *Cory v. Carter*, 48 Ind. 327; *People v. Board, &c.*, 18 Mich. 400; *Chrisman v. Brookhaven*, 70 Miss. 477, 12 So. 458; *Younger v. Judah*, 111 Mo. 303, 19 S. W. 1109; *State v. Duffy*, 7 Nev. 342; *People v. Easton*, 13 Abb. Pr. N. S. (N. Y.) 159; *State v. McCann*, 21 Ohio St. 198.

³ *Claybrook v. Owensboro*, 16 Fed. 297; *Ward v. Flood*, 48 Cal. 50; *People v. Board, &c.*, 18 Mich. 400; *State v. Duggan*, 15 R. I. 403, 6 Atl. 787.

pupils.¹ Separate schools are not unconstitutional for lack of uniformity,² but a discrimination in the length of the school year between white and colored schools is illegal as against public policy.³

Where the constitution provides that in the establishment of separate schools there shall be no discrimination or prejudice of either race, a statute is unconstitutional if it provides for a uniform tax for the purpose of erecting a school building exclusively for white pupils.⁴ And a legislative act authorizing a county to establish an agricultural high school for the instruction of its white youth, such high school to be supported by a tax on all taxable property therein, is unconstitutional in that its necessary effect is to abridge the privileges or immunities of the colored taxpayers in such county, or deny them equal protection of the laws.⁵

In the absence of statutory authority, a child by reason of its color may not be excluded from any public school.⁶ And an act to entirely exclude negroes from the public schools is unconstitutional.⁷ In the absence of statute so permitting, a school board cannot establish separate schools for Indian children and compel them to attend such separate schools.⁸

¹ *Bertonneau v. Directors*, 3 Woods (U. S. C. C.) 177.

² *Reynolds v. Board, &c.*, 66 Kan. 672, 72 Pac. 274; *People v. School Board*, 161 N. Y. 598, 56 N. E. 81.

³ *Williams v. Board, &c.*, 45 W. Va. 199, 31 S. E. 985.

⁴ *Williams v. Bradford*, 158 N. C. 36, 73 S. E. 154.

⁵ *McFarland v. Goins*, 96 Miss. 67, 50 So. 493.

⁶ *Rowles v. Board, &c.*, 76 Kan. 361, 91 Pac. 88.

⁷ *State v. Duffy*, 7 Nev. 342.

⁸ *Crawford v. District School Board, &c.*, 68 Oreg. 388, 137 Pac. 217.

The authority to establish separate schools for colored pupils does not give school directors the power to establish and maintain a separate school solely to instruct three or four colored children in the district when there are accommodations for them in the schoolhouse with the other pupils of the district. And such proceeding may be enjoined at the suit of any taxpayer of the district to prevent such misuse of the public funds.¹

Separate colored schools can be authorized only by the State, and in absence of legislative enactment a city board of education has no right to establish such separate schools, and exclude colored children from other schools.² And the power to establish separate schools as given to school officers by statute, cannot be controlled by the courts.³

If a constitutional provision requires the legislature to establish and maintain a uniform system of free public schools it is still legal to provide for the establishment outside of that system of a school exclusively for white children, and the issuance of bonds by the town in which it is located for the payment therefor is valid.⁴

Where the statute prohibits the teaching of whites and negroes in the same school, such law is constitutional as applied to a corporation as to which the State has reserved the power to alter, amend or repeal

¹ *Chase v. Stephenson*, 71 Ill. 383.

² *People v. City of Quincy*, 101 Ill. 308.

³ *State v. Gray*, 93 Ind. 303.

⁴ *Chrisman v. Brookhaven*, 70 Miss. 477, 12 So. 458.

its charter, and does not violate the constitution in denying due process of law, nor in any other way.¹

Where the statute provides that no child shall be excluded from *any* public school on account of religion, nationality or color, the exclusion of a mulatto child from a school established for white children is illegal even though separate schools are provided for colored children.² And an illegal rule to exclude colored children, even where separate colored schools are established, cannot be enforced.³

Under the Constitution and laws of Iowa school authorities have no right to deny a pupil admission to any school for reason of its color.⁴ And in that State a colored pupil cannot be compelled to attend a separate school for colored children;⁵ nor can such pupils be excluded from any public schools in Kansas or Michigan.⁶

Separate schools were abolished in Pennsylvania by the Act of June 8, 1881, so that under that act the school directors have no authority to exclude a colored child from a common school established by them exclusively for white children, and assign him to a branch school for colored children established by them in a nearby building.⁷

¹ Berea College v. Com., 211 U. S. 45, 53 L. ed. 81, 29 S. Ct. 33.

² Pierce v. Union, &c., 46 N. J. L. 76; People v. Board, &c., 127 Ill. 613, 21 N. E. 187; Dove v. Independent School, &c., 41 Iowa 689.

³ Wysinger v. Cruikshank, 82 Cal. 588, 23 Pac. 54.

⁴ Clark v. Board, &c., 24 Iowa 266.

⁵ Smith v. School District, &c., 40 Iowa 518.

⁶ Ottawa, &c., v. Tinnon, 26 Kan. 1; Knox v. Board, &c., 45 Kan. 152, 25 Pac. 616; People v. Board, &c., 18 Mich. 400.

⁷ Kaine v. Com., 101 Pa. St. 490.

And it is no objection that the establishment and maintenance of separate schools for colored children requires them to go further to reach the school than if they were to go to the school established for white children.¹ The power of general superintendence vests a plenary authority in the school directors to arrange, classify and distribute pupils in such a manner as they think best, provided such rules are reasonable, in a manner which they think best adapted to their general proficiency and welfare. If it is thought expedient, they may assign a colored child to a separate colored school, even though such school be a greater distance from its home, provided the greater distance is not unreasonable.²

In establishing a separate school for colored children it is not objectionable that they are compelled to go a greater distance than white children similarly situated, or that they are required to cross a railroad track.³ But where the location of a separate school for colored children is such that access to it is beset with such dangers to life and limb that children ought not to be required to attend it, there is a denial to such children of equal educational facilities.⁴

If a separate school for colored pupils is so remote that to attend compels a pupil to go an unreasonable and oppressive distance, then exclusion from a nearer

¹ *Ward v. Flood*, 48 Cal. 52; *Lehew v. Brummell*, 103 Mo. 546, 15 S. W. 765; *People v. Gallagher*, 93 N. Y. 451.

² *Roberts v. Boston*, 5 Cush. (Mass.) 198.

³ *Dameron v. Bayless*, 14 Ariz. 180, 126 Pac. 273.

⁴ *Williams v. Board, &c.*, 79 Kan. 202, 99 Pac. 216.

school is unlawful.¹ But it has been held that where a city maintains separate schools, according to law, for white and colored children, and owing to the smaller number of colored children their schools are fewer, the fact that some of the colored children have to walk a distance of four miles to reach a colored school passing on the way schools of the same grade for white children, does not make the distance unreasonable.²

In deciding whether a pupil is white or colored, evidence that such pupil attended a white school in the State in which he formerly lived, is admissible if that State had a separate school law. So also is the fact that such pupil was generally regarded as a white child, as well as the extent of his association with either the white or colored race.

A child is colored, although born of a white mother if the father is half white and half negro.³ But the children of a white mother and a father three-fourths white are to be classed as white.⁴ A child having one-sixteenth negro blood is a colored child and as such may be excluded from a school established exclusively for white children.⁵ And a child having one-eighth to one-sixteenth negro blood is a colored child, although his appearance is entirely that of the Caucasian race.⁶ Under statute it has been held that

¹ *U. S. v. Buntin*, 10 Fed. 730.

² *State v. Board, &c.*, 7 Ohio Dec. 129.

³ *Hare v. Board, &c.*, 113 N. C. 9, 18 S. E. 55.

⁴ *Williams v. Directors, &c.*, Wright (Ohio) 579.

⁵ *Mullins v. Belcher*, 142 Ky. 673, 134 S. W. 1151.

⁶ *Wall v. Oyster*, 36 D. C. App. 50.

“colored”, as applied to separate schools, means negro blood of even the smallest degree.¹

The question of whether a child is white or colored is to be determined by the board of school trustees with the right of appeal to the County Superintendent of schools,² where such right of appeal is given by statute.

Under laws providing for the establishing of separate schools for negroes and whites, taxation must also be laid on these lines, and negroes cannot be taxed to support white schools, nor can whites be taxed to support colored schools. Therefore, it is not improper to deny colored voters the right to vote on the issuance of bonds to establish a white school.³

A school committee need not comply with an order of the board of education to admit a colored pupil to a school established for white children, and from which the law excludes negroes.⁴

Where the statute provides that the school board shall in each year take an enumeration of the persons of school age within a district, and that when such enumeration shows a specified number of colored children therein, shall establish separate schools for such colored children, *mandamus* to compel the establishment of such schools will be awarded.⁵ *Mandamus* is the proper remedy to enforce admission to a

¹ Johnson v. Board, &c., 166 N. C. 468, 82 S. E. 832.

² Eubank v. Boughton, 98 Va. 499, 36 S. E. 529.

³ Munfordville, &c., v. Board, &c., 155 Ky. 382, 159 S. W. 954.

⁴ McMillan v. School Committee, 107 N. C. 609, 12 S. E. 330.

⁵ Morehead v. Cartwright, 122 Mo. App. 257, 99 S. W. 48.

school,¹ but *mandamus* will be refused if the complaint to compel a township trustee to establish a separate school for colored children does not show that there is a suitable number of such children to render such organization practicable.²

§ 83. Transportation.

The failure of the board of education to provide transportation for children living remote from the schoolhouse is not a failure to provide suitable school facilities and accommodations for all children residing in the district desiring to attend the public schools therein; especially when the furnishing of transportation to children living remote from schoolhouses is permissive to the board of education and not mandatory upon them.³ The duty to provide school facilities and accommodations, does not imply the duty of providing free transportation of pupils living remote from the schoolhouse.⁴ And in absence of a statute so providing, school directors have no power to hire the transportation of pupils.⁵

Where the statute provides that the directors may use part of the school money in the transportation of scholars to and from school, it rests in the discretion of the board as to whether it shall be used, and unless

¹ *Clark v. Board, &c.*, 24 Iowa 266; *People v. Board, &c.*, 18 Mich. 400; *State v. Duffy*, 7 Nev. 342; *Ward v. Flood*, 48 Cal. 36; *Cory v. Carter*, 48 Ind. 327.

² *State v. Grubb*, 85 Ind. 213.

³ *Board, &c., v. Atwood*, 74 N. J. L. 638, 65 Atl. 999.

⁴ *Ibid.*

⁵ *Mills v. School Directors, &c.*, 154 Ill. App. 119.

there is an intentional discrimination *mandamus* will not lie to compel such transportation.¹ And where the statute authorizes the school board to arrange for transportation of school children in certain cases, and the necessity for which rests in their discretion, the remedy for failure to provide such transportation is by appeal to the County Superintendent, and *mandamus* will not lie.²

Where compulsory attendance at a public school, and conveyance for pupils living beyond a certain distance from the schoolhouse thereto, are both provided for by statute, the parent or guardian of a pupil living beyond such specified distance is not amenable to the compulsory attendance law when the conveyance is not provided.³

If no estimate of expenses for transportation of pupils is included in the tax levy, and there are consequently no funds on hand for that purpose, it is a good defense on the part of a school trustee against whom proceedings are brought to compel such transportation.⁴ And if a school trustee, with the concurrence of an advisory board, levies a tax to provide free transportation of a pupil, his successor in office is not obliged to furnish such free transportation unless the statute places upon him the legal duty to do so.⁵

In furnishing free transportation under a statute

¹ *Carey v. Thompson*, 66 Vt. 665, 30 Atl. 5.

² *Queeney v. Higgins*, 136 Iowa 573, 114 N. W. 51.

³ *State v. Hall*, 74 N. H. 61, 64 Atl. 1102.

⁴ *Dunten v. State*, 172 Ind. 59, 87 N. E. 733.

⁵ *State v. Jackson*, 168 Ind. 384, 81 N. E. 62.

requiring it for all pupils living more than two and one-half miles from a schoolhouse, a requirement that boys from ten to nineteen years of age cross a frozen river and walk a distance of one-third of a mile to meet a conveyance is not an abuse of the discretion vested in a school board.¹

The right of transportation of a pupil to a public school is a public right,² and as such gives no right of action against a municipality infringing it,³ in absence of a statute creating liability. Therefore, at common law, a school district is not liable for injuries to a pupil which are resultant from improper means of transportation negligently provided for his accommodation at the expense of the public.⁴

A statute requiring railway companies to carry pupils of the public schools to and from schools at rates not exceeding half the regular fare charged for the transportation of other passengers between the same points, is constitutional, it being a police regulation in the interest of education.⁵ But if it plainly appeared that the enforcement of such law would cause expense to street railway companies, which they would have to bear, or put it upon other classes of passengers in the form of increased fares to make good the loss from carrying school children at half rates, there would be a taking of property without due

¹ *State v. Mostad*, 28 N. D. 244, 148 N. W. 831.

² *Rhobidas v. Concord*, 70 N. H. 90, 47 Atl. 82.

³ *Harris v. Salem*, 72 N. H. 424, 57 Atl. 332.

⁴ *Ibid.*

⁵ *Com. v. Interstate, &c. Ry.*, 187 Mass. 436, 73 N. E. 530.

process of law, through unconstitutional discrimination. In estimating the cost of carrying such school children, the legislature may properly consider the size of such children, and the hours at which they travel, as well as the probable increase in travel on the cars by reason of such reduced rates.¹ And a condition in a grant of franchise requiring a street railroad company to carry pupils in any school at reduced rates, was held reasonable and valid, and was construed to include students attending a business college, also students attending a regular college.²

¹ *Com. v. Interstate, &c. Ry.*, 187 Mass. 436, 73 N. E. 530.

² *Northrop v. Richmond*, 105 Va. 335, 53 S. E. 962.

CHAPTER VII

RULES AND REGULATIONS

§ 84. Power of Adoption.

School boards and other educational authorities of the State have the power to adopt appropriate rules and regulations for the government of the schools under their control, and when so adopted, such rules and regulations are analogous to by-laws and ordinances, and are tested by the same general principles.¹ And the general power to take charge of the educational affairs of a district, or prescribed territory, includes the power to make all reasonable rules and regulations for the discipline, government and management of the schools within the district or territory.²

Although the trustees of public schools have statutory authority to direct what branches should be taught, and to adopt and enforce all necessary rules and regulations for the management and government of schools, it has been held that where a candidate for admission passed a satisfactory examination in everything but grammar, there was no right to refuse him admission on that ac-

¹ *State v. Webber*, 108 Ind. 31, 8 N. E. 708; *Fertich v. Michener*, 111 Ind. 472, 11 N. E. 605.

² *State v. Burton*, 45 Wis. 150; *Ferriter v. Tyler*, 48 Vt. 444; *Hodgkins v. Rockport*, 105 Mass. 475; *People v. Medical Soc.*, 24 Barb. (N. Y.) 570; *Thompson v. Beaver*, 63 Ill. 353.

count, and that *mandamus* would lie to compel his admission to study the other branches.¹

§ 85. Manner of Establishing.

The power to make rules does not imply that all the rules, orders and regulations for the discipline, government and management of the schools shall be made a matter of record by the school board, or that every act, order or direction affecting the conduct of such schools shall be authorized or confirmed by a formal vote. Nor is it necessary that any prohibitive rule exist in order to justify punishment for flagrant misconduct.

No system of rules however carefully prepared can provide for every possible emergency or meet every requirement. In consequence, much must necessarily be left to the individual members of the school boards, and to the superintendents of, and the teachers in the several schools.² It follows that any reasonable rule adopted by a superintendent, or a teacher merely, not inconsistent with some statute or some other rule prescribed by higher authority, is binding upon the pupils.³ And a teacher may take a pistol from a pupil who has carried it to school, using all necessary force in doing so.⁴ A pupil may also be punished although no rule has been promulgated.⁵

¹ Lake View, &c., v. People, 87 Ill. 303.

² Russell v. Lynnfield, 116 Mass. 365.

³ Fertich v. Michener, 111 Ind. 472, 11 N. E. 605. In the absence of rules prescribed by the school board or other proper authority the teacher may make all necessary and proper rules for the regulation of the school; Sheehan v. Sturges, 53 Conn. 481, 2 Atl. 841.

⁴ Metcalf v. State, 21 Tex. App. 174, 17 S. W. 142.

⁵ State v. District Board, &c., 135 Wis. 619, 116 N. W. 232.

§ 86. Reasonableness and Validity.

Whether a by-law or other kindred regulation is reasonable or valid, is a question of law for the decision of the court, and hence not a question of fact for the determination of the jury.¹

No rule, however reasonable it may be in its general application, ought to be enforced when, to enforce it will inflict actual and unnecessary suffering upon a pupil. Rules are often adopted inflicting a penalty for absence from school without proper or some prescribed leave, and such rules have always been held to be reasonable and sometimes necessary school regulations, and yet such rules could not be lawfully enforced against a pupil detained from school by sickness, a violent storm, a death in the family, or any physical disability to attend.² A school regulation must therefore be not only reasonable in itself, but its enforcement must also be reasonable in the light of existing circumstances.

In prescribing a salute to the flag as a ceremony at the opening exercises of a school there exists on the part of a board of education no authority to make a rule that a pledge be repeated by the pupils to the effect, "I pledge allegiance to my flag, and to the Republic for which it stands, one nation indivisible, with liberty and justice to all", inasmuch as such pledge is one of allegiance to the United States and cannot be legally enforced against the children of

¹ *State v. White*, 82 Ind. 278; *Fertich v. Michener*, 111 Ind. 472, 11 N. E. 605.

² *Fertich v. Michener*, *supra cit.*

those who are not citizens of the United States but who have a right to attend the public schools, and a refusal to repeat such pledge is no ground for suspension.¹

The board of education has power to make, establish and enforce all necessary and proper rules and regulations not contrary to law, and if a teacher obeys the command of the board in enforcing a rule that is contrary to the law of the State, it cannot be justified.² But a teacher would not be responsible for a mere mistake of judgment. To make a teacher liable it must be shown that the act complained of was wanton, willful or malicious.³

If a pupil purposely runs against another pupil and injures him so that it is necessary for the injured pupil to go home, it is right and proper upon the part of the teacher to require the pupil causing the injury to accompany the injured pupil to his home, even if such requirement is intended as a punishment. And expulsion of the pupil for failure to comply with this requirement will not be considered good ground for the issuance of a writ of *mandamus* to require his reinstatement.⁴

§ 87. Carrying Fuel.

Much discretion must necessarily be left to school boards as to the nature of rules prescribed, yet it can-

¹ Decision of State Com'r of N. J., Nov. 8, 1912.

² *Tape v. Hurley*, 66 Cal. 473, 6 Pac. 129; *Wysinger v. Cruikshank*, 82 Cal. 588, 23 Pac. 54.

³ *Elmore v. Overton*, 104 Ind. 548, 4 N. E. 197; *McCormick v. Burt*, 95 Ill. 263; *Dritt v. Snodgrass*, 66 Mo. 286.

⁴ *Beatty v. Randall*, 79 Mo. App. 226.

not fairly be claimed that the boards are uncontrolled in the exercise of their discretion and judgment upon the subject. The rules and regulations made must be reasonable and proper, and needful for the government, good order, and efficiency of the school, such as will best advance the pupils in their studies, tend to their education and mental improvement, and promote their interest and welfare.

But the rules and regulations must relate to these objects. The boards are not at liberty to adopt rules relating to other subjects according to their humor or fancy, and make a disobedience of such a rule by a pupil cause for his suspension or expulsion. Therefore it was held that a rule or regulation requiring a pupil to bring up wood for use in the school room was one which the board had no right to make and enforce.¹

§ 88. Rhetorical Exercises and Dialogues.

Where a rule adopted by the school authorities required that a pupil at a stated time should be prepared with a rhetorical exercise, and that unless he be excused on account of sickness or other reasonable cause should present such exercise under penalty of suspension, it was held that such a rule was a reasonable one. Neither the teacher enforcing such rule nor the board of education is liable in damages therefor.²

A pupil may be suspended for willful refusal to take

¹ *State v. Board, &c.*, 63 Wis. 234, 23 N. W. 102.

² *Sewell v. Board, &c.*, 29 Ohio St. 89.

part in a dialogue in annual commencement exercises, when such refusal amounts to insubordination.¹

§ 89. Compositions and Debates.

The authorities of a public school have full power to make it a part of the school course to write compositions, and enter into debates, and to make rules requiring that all pupils shall participate therein. And the matter of selecting topics for such compositions and debates rests entirely with the school authorities who have the power of determining whether the topic selected by them is suitable to the attainments and age of the pupil, and the courts will not interfere when they have exercised their discretion.²

If a pupil is assigned a topic on which to prepare a composition, and does not do so, but reads one prepared by his father, and which contains matter disrespectful to the teacher, two offenses are committed; and the school authorities have the right to condone the offense of reading such improper composition prepared by the father, and still punish the pupil for failure to perform the task assigned. If this punishment consist of the assignment of a similar task for future performance and the pupil refuses to prepare such composition, he may be disciplined by expulsion, suspension, or other proper punishment.³

Teaching by means of requiring written compositions is not inconsistent with a statute that requires

¹ *Cross v. Board, &c.*, 33 Ky. L. Rep. 472, 110 S. W. 346.

² *Samuel Benedict School v. Bradford*, 111 Ga. 801, 36 S. E. 920.

³ *Ibid.*

“each organized town to keep and support one or more schools, provided with competent teachers, of good morals, for the instruction of the young in orthography, reading, writing, English grammar, geography, arithmetic, history of the United States, and good behavior.” It is obvious that English composition may fairly be regarded as an allowable mode of teaching many of these branches. Writing requires the joining of letters into words, and of words into sentences, with the use of capitals, punctuation and correct English. Grammar is taught more effectively by writing than by any other method. Orthography signifies literally writing correctly, and composition is the only mode of securing correct orthography in a mode to be of practical utility. So too geography, history and the other branches mentioned in the statute are by writing most effectually fixed in the memory of the pupil.

And so in regard to instruction in the specified branches of common school education, the writing of English composition in different forms may be regarded as an allowable mode of teaching the majority of them. The requirement by a teacher that the pupils in grammar shall write English compositions, is a reasonable one, and if a pupil, in absence of a request from his parent that he may be excused from so doing, refuse to comply with such a requirement, he may for such refusal, be expelled from a public school. And such requirement would also be reasonable and proper in regard to many of the other studies prescribed by the statute.¹

¹ *Guernsey v. Pitkin*, 32 Vt. 224.

§ 90. Tardiness.

Tardiness is a recognized offense against the good order and proper management of all schools.¹ A tardy pupil may be required to remain in some part of the building for the short period of time required to complete the opening exercises of a school, provided the place of enforced waiting is made comfortable and healthful for the pupil, and in accordance with the rule that due regard must be had to the health, comfort, age and mental as well as physical condition of the pupil, and to the circumstances attending each particular emergency.² Cold weather may require a modification of a rule that under moderate temperature would be reasonable; and against pupils known to have some physical or mental infirmity, a modification or relaxation in the strict enforcement of a rule may be necessary.

§ 91. Detention.

The detention or keeping in of pupils for a short time after the other members of the class have been dismissed, or the school has closed, as a penalty for some misconduct, shortcoming or mere omission, has been very generally adopted by the schools, especially those of the lower grade, and it is now one of the recognized methods of enforcing discipline and promoting the progress of the pupils in the common schools. It is a mild and non-aggressive method of imposing a penalty, and inflicts no disgrace upon the pupil. The

¹ *Burdick v. Babcock*, 31 Iowa 562.

² *Fertich v. Michener*, 111 Ind. 472, 11 N. E. 605.

additional time thus spent by the pupil in study presumably inures to his benefit.

However mistaken a teacher may be as to the justice or propriety of imposing such a penalty at any particular time, it has none of the elements of false imprisonment about it, unless imposed from wanton, willful or malicious motives. In the absence of such motives, such a mistake amounts only to an error of judgment in an attempt to enforce discipline in the school for which an action will not lie.¹ And any public officer, such as a school officer, acting in good faith, is not liable for errors in judgment.²

§ 92. Secret Societies.

For connection with secret societies pupils may not be debarred from attending public schools.³ But school directors may adopt rules debarring members of fraternities organized against their will, from participating in certain privileges connected with membership in school, such as participating in graduation exercises, joining the cadet corps, orchestra, debating societies, glee clubs, and other school organizations, even though the parents of the pupils consented to their joining such fraternities.⁴ This has been held a reasonable rule on the ground that such membership tends to foster insubordination to school authorities, and tends to lower the scholarship of the pupils.

¹ *Fertich v. Michener*, *supra cit.*

² *Donahoe v. Richards*, 38 Me. 379.

³ *Stallard v. White*, 82 Ind. 278.

⁴ *Wayland v. Board, &c.*, 43 Wash. 441, 86 Pac. 642.

The first Greek letter society in a secondary school was Alpha Phi, a literary society, which became part of a fraternity in 1876. Subsequently secret societies sprang into existence in high schools in the United States to a great extent. Many educators have come to believe that whatever good might be claimed for such societies among mature college students, was not shared by such societies formed among students of the lower grades of schools whose characters are to a greater extent unformed.

It has been said that such societies tend to engender an undemocratic spirit of caste, to promote cliques, and to foster contempt for school authority. To curb what is said to be their evil effects in secondary schools, rules and regulations have been adopted by many school authorities, and statutes have been enacted in several States including California, Ohio, Indiana, Maine, Minnesota, Kansas and Vermont, either absolutely forbidding them or placing them under control.

Cases arising on the statutes and local regulations have come before the courts of several States, and it has been uniformly held that reasonable rules adopted by school authorities to prevent the establishment and development of these secret societies in preparatory schools, are valid.¹

It is reasonable for a board of education to adopt a rule requiring teachers to refuse to give public recogni-

¹ *Bradford v. Board, &c.*, 18 Cal. App. 19, 121 Pac. 929; *Wayland v. Board, &c.*, 43 Wash. 441, 86 Pac. 642; *Wilson v. Board, &c.*, 233 Ill. 464, 84 N. E. 697; *Favorite v. Board, &c.*, 235 Ill. 314, 85 N. E. 402; *People v. Wheaton College*, 40 Ill. 186.

tion to Greek letter societies, or allow meetings of such societies to be held in the school buildings, or permit the name of the school to be used in connection with such societies, or allow the members to represent the school in any literary or athletic contests, or in any other public capacity.¹

A statute prohibiting secret societies and fraternities in public schools, or educational institutions supported wholly or in part by the State, is not unconstitutional as infringing privileges and immunities of citizens.²

§ 93. Football Playing.

The school directors may make a rule, "Resolved, that the Board of Directors disfavor football on account of injuries to life and limb, and for that reason will not permit football or practice under the auspices of the high school, or on the school grounds", and if a pupil violates the rule, even away from the school grounds, and on a holiday, by participating in a game on a team advertised as representing the school, he may be suspended or expelled.³ This is on the broad ground that if the effects of acts done out of school hours reach within the school room during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden.⁴

¹ *Wilson v. Board, &c.*, 233 Ill. 464, 84 N. E. 697.

² *Bradford v. Board, &c.*, 18 Cal. App. 19, 121 Pac. 929; *Board, &c., v. Waugh*, 105 Miss. 623, 62 So. 827.

³ *Kinzer v. Directors, &c.*, 129 Iowa 441, 105 N. W. 686.

⁴ *Burdick v. Babcock*, 31 Iowa 562.

§ 94. Pupils to Go Directly Home After School.

A board of education under statutory authority to pass rules relative to anything whatever that may advance the interests of education, good government, and prosperity of the public schools, and the welfare of the public concerning them, may require pupils to go directly home when dismissed from school,¹ and a tradesman has no right of action for a loss of patronage resulting from the enforcement of such order.

It is not only the legal right, but the moral duty of the school authorities, to require children to go directly from school to their homes. All parents who have a proper regard for the welfare of their children desire it. The State makes it compulsory upon parents to send their children to school, and punishes them for a failure to do so. The least that the State can in reason do, is to throw every safeguard possible around the children who, in obedience to the law are attending school. The dangers to which children are exposed upon the streets of cities are matters of common knowledge. Humanity and the welfare of the country demand that a most watchful safeguard should, as far as possible accompany the children, when required or allowed to be on the streets. Parents have a right to understand that their children will be promptly sent home after school, and to believe that something unusual has happened when they do not return in time. In no other way can parents and teachers act in harmony

¹ *Fertich v. Michener*, 111 Ind. 472, 11 N. E. 605.

to protect children from bad influences, bad companionship, and bad morals.¹

§ 95. Conduct Outside of School.

The directors of a school district are not authorized to prescribe a rule which undertakes to regulate the conduct of the children within the district who have a right to attend the school, after they are dismissed from it and remitted to the custody or care of the parent or guardian, except as to matters directly affecting the discipline of the school.² They have the unquestioned right to make needful rules for the control of the pupils while at school and under the charge of the person who teaches it, and it would be the duty of the teacher to enforce such rules when made. While in the teacher's charge, the parent would have no right to invade the schoolroom and interfere with him in its management. On the other hand, when the pupil is released and sent back to his home, neither the teacher nor directors have the authority to follow him thither, and govern his conduct while under the parental eye in matters not affecting the discipline of the school. Therefore, a rule requiring that no pupil shall attend social parties during the school term, and expulsion for violation of such rule by a pupil having permission of his parents, is unreasonable and unlawful.³

The control of the pupils by the school authorities

¹ *Jones v. Cody*, 132 Mich. 13, 92 N. W. 495.

² *State v. District Board, &c.*, 135 Wis. 619, 116 N. W. 232.

³ *Dritt v. Snodgrass*, 66 Mo. 286; *State v. Osborne*, 24 Mo. App.

after school hours, obtains until the pupils are at home in the custody of their parents,¹ and there it ceases except as to matters having a direct tendency to affect the discipline of the school.² The school directors have no right to enact rules which invade the rights of the parents. And where a pupil by the permission of his parents violates such rule and is expelled, such expulsion is illegal.³ But if the exclusion was without malice on the part of the directors, they are not personally liable therefor.⁴ And school authorities have no right to adopt a rule requiring all pupils of the school to remain in their homes and study during certain designated hours in the evening.⁵

§ 96. Truancy. — Attendance Officers.

At common law truancy was not an offense, and is now an offense only when made so by statute, ordinance or by-law.⁶ Although truancy as an offense is committed wholly beyond the precincts of the school, no example is more contaminating, no malconduct more subversive of discipline, and an incorrigible truant may be expelled, not as a punishment merely, but as a protection to others from injurious example and influence.⁷

A rule that "any pupil absent six half days in four

¹ *Jones v. Cody*, 132 Mich. 13, 92 N. W. 495.

² *Gott v. Berea College*, 156 Ky. 376, 161 S. W. 204.

³ *Dritt v. Snodgrass*, 66 Mo. 286.

⁴ *Ibid.*

⁵ *Hobbs v. Germany*, 94 Miss. 469, 49 So. 515.

⁶ *Cushing v. Friendship*, 89 Me. 525, 36 Atl. 1001.

⁷ *Sherman v. Charlestown*, 8 Cush. (Mass.) 160.

consecutive weeks, without satisfactory excuse, shall be suspended from school " is a valid rule, and clearly within the power of the board of directors to adopt under a statute providing that " the board shall have the power to make all needful rules and regulations for the organization, grading, and government of the schools in their district." ¹

If an attendance officer, appointed by a board of education pursuant to a statute, wrongfully arrests a pupil, the board is not liable, inasmuch as the doctrine of *respondeat superior* does not apply to their relations.²

An attendance or truant officer is a public officer and therefore bound to qualify by taking the oath.³

§ 97. Incidental Fees.

Although a characteristic feature of public schools is that they are free of expense, it has been held that a reasonable incidental fee may be imposed upon pupils to pay for heat, in absence of a statute creating a fund for that purpose. And any pupil failing to comply with such rule may be excluded from the school.⁴

But the discretion as to incidental fees must be reasonably exercised, and a school board will not be permitted to exact a tuition fee from a pupil of a public

¹ *King v. Jefferson, &c.*, 71 Mo. 628.

² *Reynolds v. Little Falls, &c.*, 33 N. Y. App. Div. 88, 53 N. Y. S. 75.

³ *Feathergill v. State*, 33 Ind. App. 683, 72 N. E. 181.

⁴ *Bryant v. Whisenant*, 167 Ala. 325, 52 So. 525. There is a well defined distinction between tuition and reasonable incidental fees; *State v. University of Wisconsin*, 54 Wis. 159, 11 N. W. 472; *Robertson v. Oliver*, 189 Ala. 82, 66 So. 645.

school under the guise of a mere incidental fee. So where an excessive fee was sought to be exacted from pupils for the purpose of providing supplies, and the balance if any to be paid to teachers in order that the term of the school might be prolonged, it was held to be a tuition fee and consequently illegal.¹

¹ *Roberson v. Oliver*, 189 Ala. 82, 66 So. 645.

CHAPTER VIII

OF BOOKS AND STUDIES

§ 98. Prescribing Studies.

The legislature, in its plenary control of the public school system, may prescribe a reasonable course of studies for the public schools, but the courts may not do so.¹ And the legislature has the power in establishing and controlling the public school system to extend it beyond the common branches so as to include public instruction in agriculture and home economics.²

Although school trustees have the power to prescribe the teaching of music in the public schools,³ they have not the power to establish a course of study inconsistent with that adopted by the State Board of Education.⁴

When the legislature has placed the management of public schools under the exclusive control of directors, trustees, and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given, or what books shall be used therein.⁵

¹ *Roach v. St. Louis, &c.*, 7 Mo. App. 567.

² *Associated Schools, &c., v. School District, &c.*, 122 Minn. 254, 142 N. W. 325.

³ *Myers Pub. Co. v. White River, &c.*, 28 Ind. App. 91, 62 N. E. 66.

⁴ *Westland Pub. Co. v. Royal*, 36 Wash. 399, 78 Pac. 1096.

⁵ *Board, &c., v. Minor*, 23 Ohio St. 211.

And the courts may not interfere even though the committee should select books of a dangerous and immoral tendency.¹

§ 99. Adoption of Books.

The statutes of many States provide that local authorities shall adopt books for use in the public schools, and each board, whether of a city, township, or county is local as to the territory of its jurisdiction. Therefore the board in a city is local as to the city; the board of a township is local as to the township; and the board of a county is local as to the county; and where portions of a county are subject to local boards for such portions, the county board is local as to the remaining portions of the county.²

A State may even purchase books and compel the patrons of the school to buy the books from its officers,³ and a State may also provide by statute that a designated person shall have the exclusive privilege of furnishing all text-books needed for the use of the public schools.⁴ And it is within the power of the legislature to require the adoption and use of the books of a designated publisher.⁵ In fact, where the constitution of a State does not prohibit, the State legislature has power to establish a uniform series of

¹ *Donahoe v. Richards*, 38 Me. 379.

² *People v. Oakland, &c.*, 55 Cal. 331.

³ *Curryer v. Merrill*, 25 Minn. 1.

⁴ *Bancroft v. Thayer*, 5 Sawy. (U. S. C. C.) 502.

⁵ *State v. State Board, &c.*, 18 Nev. 173, 1 Pac. 844; *People v. Copeland, &c.*, 55 Cal. 331.

text-books for use in the public schools.¹ And the statutes may authorize the changing of text-books with restrictions as to the number of changes to be made within a given time.²

Where the statute provides that six months' notice of a proposed change of text-books shall be given by the State Board of Education, such notice must be given by authority of the board, and it is not sufficient that the notice be given in the newspapers as a matter of news.³ And where the statute prescribes that the school board, when desirous of adopting text-books for use in the schools of the district for the ensuing year, shall call the teachers for that year to be present at a meeting for the purpose of advice and consultation, such direction is mandatory, and therefore the adoption of such text-books before the teachers are selected is invalid.⁴

Where the legislature fails to prescribe a uniform series of text-books and has not given special authority to any officer or board to do so, the trustees of the school district have the right to prescribe a rule designating certain text-books for use in the public schools of their district.⁵

¹ *State v. Haworth*, 122 Ind. 462, 23 N. E. 946; *Baltimore, &c., v. State, &c.*, 26 Md. 505; *Curryer v. Merrill*, 25 Minn. 1; *Leeper v. State*, 103 Tenn. 500, 53 S. W. 962.

² *People v. Board, &c.*, 175 Ill. 9, 51 N. E. 633; *Jones v. Board, &c.*, 88 Mich. 371, 50 N. W. 309; *State v. Board, &c.*, 18 Nev. 173, 1 Pac. 844; *State v. Board, &c.*, 35 Ohio St. 368.

³ *People v. Board, &c.*, 49 Cal. 684.

⁴ *Butler v. Shirley, &c.*, 15 Pa. Co. Ct. 291.

⁵ *Campana v. Calderhead*, 17 Mont. 548, 44 Pac. 83.

§ 100. Uniformity of Books.

Where the Constitution of a State makes it the duty of the legislature "to provide by law for a general and uniform system of common schools", the selecting and establishing of a uniform standard of text-books, and the regulation of the mode of obtaining and distributing such books is a matter for legislative action, and does not impinge in the slightest degree upon the rights of local self-government. The right of local self-government is an inherent, and not a derivative, one. Individualized, it is the right which a man possesses in virtue of his character as a freeman. It is not bestowed by legislatures, nor derived from statutes. But the courts which have carried to its utmost extent the doctrine of local self-government have never so much as intimated that it exists as to a matter over which the constitution has given the law-making power supreme control; nor have they gone beyond the line which separates matters of purely local concern from those of State control.

Essentially and intrinsically, the schools in which are educated and trained the children who are to become the rulers of the Commonwealth are matters of State, and not of local jurisdiction. In such matters the State is a unit and the legislature the source of power. The authority over schools and school affairs is not necessarily a distributive one to be exercised by local instrumentalities, but, on the contrary, it is a central power residing in the legislature of the State. It is for the law-making power to determine whether the authority shall be exercised by a State

Board of Education, or distributed to county, township or city organizations throughout the State. With that determination the judiciary can no more rightfully interfere than can the legislature with a decree or judgment pronounced by a judicial tribunal. The decision is as conclusive and inviolable in the one case as in the other, and an interference with the legislative judgment would be a breach of the Constitution which no principle would justify nor any precedent excuse.¹

As the power over schools is a legislative one, it is not exhausted by exercise. The legislature, having tried one plan, is not precluded from trying another. It has a choice of methods and may change its plans as often as it deems necessary or expedient, and for mistakes or abuses it is answerable to the people, but not to the courts. It is clear, therefore, that even if it were true that the legislature had uniformly intrusted the management of school affairs to local organizations, it would not authorize the conclusion that it might not change the system. To deny the power

¹ *State v. Springfield, &c.*, 74 Mo. 21; *State v. Columbus Board, &c.*, 35 Ohio St., 368; *Baltimore School Com'rs v. State Board, &c.*, 26 Md. 505; *Robinson v. Howard*, 84 N. C. 151; *Stuart v. Kalamazoo, &c.*, 30 Mich. 69; *Ford v. Kendall, &c.*, 121 Pa. St. 543, 15 Atl. 812; *People v. Quincy, &c.*, 101 Ill. 308; *Richards v. Raymond*, 92 Ill. 612; *Powell v. Board, &c.*, 97 Ill. 375; *Briggs v. Johnson Co.*, 4 Dill. (U. S. C. C.) 148; *Rawson v. Spencer*, 113 Mass. 40; *Com. v. Hartman*, 17 Pa. St. 118; *Clark v. Haworth*, 122 Ind. 462, 23 N. E. 946; *Cooley's Constitutional Limitations*, 7th ed., 261, note 1; *Leeper v. State*, 103 Tenn. 500, 53 S. W. 962; *Iverson v. School Com'rs*, 39 Fed. 735; *Effingham v. Olson*, 48 Kan. 565, 30 Pac. 16; *Johnson v. Ginn*, 105 Ky. 654, 49 S. W. 470; *Com. v. Ginn*, 111 Ky. 110, 63 S. W. 467; *Hartwell v. Littleton*, 13 Pick. (Mass.) 229.

to change is to affirm that progress is impossible and that we must move forever "in the dim foot-steps of antiquity." But the legislative power moves in a constant stream and is not exhausted by its exercise in any number of instances, however great.¹

It is impossible to conceive of the existence of a uniform system of common schools without power lodged somewhere to make it uniform, and even in the absence of express constitutional provisions, that power must necessarily reside in the legislature. If it does reside there, then that body must have, as an incident of the principal power, the authority to prescribe the course of study and the system of instruction that shall be pursued and adopted, as well as the books which shall be used. This general doctrine is well entrenched by authority.²

Where the statute requires the adoption of "a uniform series" of text-books in the public schools, this term applies to the entire series of text-books adopted, and the term "uniformity" does not mean that all the text-books of one author in grammar, arithmetic or other study for the different grades of scholars must be used. Boards of education are at liberty, under a "uniformity" law, to adopt the book of one author for use in all the primary departments, and the book of another author on the same subject in all grammar or higher departments. All that the law

¹ *Clark v. Haworth*, 122 Ind. 462, 23 N. E. 946.

² *Ibid.*; *Hovey v. State*, 119 Ind. 395, 21 N. E. 21; *State v. Hawkins*, 44 Ohio St. 98, 5 N. E. 228; *State v. Harmon*, 31 Ohio St. 250.

requires is that they shall be uniform in the same grade.¹

§ 101. Text-Book Commissions.

In some States the statutes have created a school book or text-book commission, with view of establishing uniform text-books throughout the State. Although such uniformity tends to lower the cost of school books, and is consequently desirable, the principal mischief sought to be avoided by such statutes was the lack of uniformity in the books in the same grades of the public schools, which necessitated the purchase of new books for school children when a family moved from one district to another.

The purpose of such statutes is not to be thwarted by the local adoption of "reference" books to be used in connection with books adopted by the Text-Book Commission; and a first reader cannot be used as a reference book by a child learning to read in another.²

Where the statute provides for a school book commission with power to select text-books and to make contracts for supplying such books to the pupils, the legislature has the power to delegate the power of adopting or changing text-books to the State board, local board, or committee.³ And the appointment

¹ *Heath & Co. v. Board, &c.*, 133 Mich. 681, 95 N. W. 746; *State v. Fairchild*, 87 Kan. 781, 125 Pac. 40.

² *State v. Innes*, 89 Kan. 168, 130 Pac. 677.

³ *School Trustees v. People*, 87 Ill. 303; *Third Ward School District v. City Board, &c.*, 23 La. An. 152; *Jones v. Board, &c.*, 88 Mich. 371, 50 N. W. 309; *Effingham v. Hamilton*, 68 Miss. 523, 10 So. 39; *State v. Board, &c.*, 18 Nev. 173, 1 Pac. 844; *State v. Board, &c.*, 35 Ohio St. 368.

of a school book commission, whose duties are to select text-books and make contracts for supplying the pupils therewith, is not a supervision of instruction.¹

§ 102. Bids for Supplying Books.

Having the authority to provide uniformity in text-books, the legislature may not only prescribe regulations for using such books, but it may also declare how the books shall be obtained and distributed. If it may do this, then it may provide that they shall be obtained through the medium of a contract awarded to the best or lowest bidder, since, if it be true, as it unquestionably is, that the power is legislative, it must also be true that the legislature has an unrestricted discretion and an unfettered choice of methods.

If the legislature exercises its right to make a choice of methods by enacting that the books for the schools shall be furnished by the person making the most acceptable bid, the courts cannot interfere, because the power exercised is a purely legislative one, and within the legislative domain courts are forbidden to enter. There is no escape from this conclusion save by a denial of legislative independence, and an assertion of the right of judicial surveillance and control.

A legislative act providing for the furnishing of books for the public schools is passed for the purpose of benefiting the public and therefore cannot be declared invalid as requiring public officers to perform duties which incidentally confer a benefit upon individual book dealers. Such an act does not contravene con-

¹ *Wolfe v. Bronson*, 115 Mo. 271, 21 S. W. 1125.

stitutional provisions against monopolies because it designates certain books as a standard and requires that books furnished be equal in merit to those named and adopted, and permits the selection of copyrighted books requiring that the exclusive contract for furnishing them be awarded to the best and lowest bidder where there is no exclusion of persons from bidding but allows the competition to be by open bidding.¹

Where the statute provides that in receiving bids for the furnishing of school books a convention shall be called for that purpose which "shall meet and publicly open and read the proposals", such provision is directory only and a failure to literally comply therewith is not material, but a substantial compliance is sufficient.²

Where the board of directors are empowered by statute to adopt and purchase text-books, after advertising for bids thereon and awarding the contract to the lowest responsible bidder, the awarding of such contract without advertising is illegal, not only as to the contract but also as to the text-books selected.³

Where the successful bidder for the supply of school books fails to deliver a contract which he has executed, the board of education is authorized to make a new contract under the advertisement for bids.⁴

§ 103. Free Books.

In the absence of special legislation, a school board has not the power to purchase and furnish free text-

¹ *Clark v. Haworth*, 122 Ind. 462, 23 N. E. 946.

² *Tanner v. Nelson*, 25 Utah 226, 70 Pac. 984.

³ *McNees v. School, &c.*, 133 Iowa 120, 110 N. W. 736.

⁴ *Johnson Pub. Co. v. Blease*, 91 S. C. 55, 74 S. E. 36.

books.¹ But the legislature by statute may prescribe that the books shall be furnished free of cost to parent or pupil.²

Where the statute provides that the school committee of each town shall procure class books at the expense of the town to be paid for out of the town treasury, the committee may either get the books on credit of the town, or may themselves buy them at advantageous prices and thereby make themselves creditors of the town in like amount. In such cases the rule that an agent to purchase cannot himself be the seller does not apply.³

§ 104. Publishers' Contracts.

The legislature has the power to compel publishers of school books to license their books as a condition precedent to their sale for use in the public schools. That body may also fix a price on the text-books to be used, and such law is not unconstitutional, as the publishers may refuse to contract in compliance with such statute, even if the result be the closing of the public schools.⁴

When a State Board of Education has, in connection with the adoption of a series of text-books, contracted with the publisher for the use of such books for a period of five years in certain grades in the public schools,

¹ *Jackson, &c., v. Hadley*, 59 Ind. 534; *Honey Creek, &c., v. Barnes*, 119 Ind. 213, 21 N. E. 747.

² *Board, &c., v. Detroit*, 80 Mich. 548, 45 N. W. 585; *Shelby County Council v. State*, 155 Ind. 216, 57 N. E. 712.

³ *Hartwell v. Littleton*, 13 Pick. (Mass.) 229.

⁴ *Polzin v. Rand, McNally & Co.*, 250 Ill. 561, 95 N. E. 623.

the legislature has no power to impair the obligation of the contract; and the fact that the books adopted were found too advanced for the grade in which they were to be used is no excuse for the breach of such contract.¹ And if such adopted book is not used at all for one of the years of such contract, a *mandamus* will lie to compel its use.² But not if unused for a portion of a year of the contract.³ And where such contract provides for changes in and additions to such books required to be furnished by such contract, it is not competent in defense of a breach thereof, to say that such altered book is not the book adopted.⁴

Where such contract is in conformance to law, made between the State Board of Education and the publisher, boards of school directors, not being parties to such contract, are not entitled to question their legality in an action brought against them to compel a compliance therewith.⁵ And the fact that a school book board changed books without sufficient vote, is not sufficient ground for a publisher, having a five year contract to furnish books, to compel such board to renew its contract for another period of five years.⁶

An offer to supply a State with certain books, when accepted by a vote of the legislature becomes a valid contract.⁷

¹ *Rand, McNally & Co. v. Hartranft*, 32 Wash. 378, 73 Pac. 401.

² *Eaton & Co. v. Royal*, 36 Wash. 435, 78 Pac. 1093.

³ *Wagner v. Royal*, 36 Wash. 428, 78 Pac. 1094.

⁴ *Ibid.*

⁵ *Rand, McNally & Co. v. Royal*, 36 Wash. 420, 78 Pac. 1103.

⁶ *Ginn & Co. v. Schoolbook Board, &c.*, 62 W. Va. 428, 59 S. E. 177.

⁷ *Com. v. Collins*, 75 Ky. 386.

§ 105. Publishers' Bonds.

In some States the statute requires that a publisher who contracts to furnish certain school books shall give a bond so conditioned as to prevent the sale of such books at a lower price in other States, and that the books shall be equal to the samples furnished. The exacting of such bond and the inflicting of the penalty for breach thereof by a publisher of school books, is not unconstitutional as depriving such publisher of his property without due process of law.¹

Where school book publishers give such bond and are made defendants in an action for the breach thereof, it is not material whether the school board of the county in which the breach occurred, took an oath of office, or whether the County Superintendent caused the books to be adopted in the common schools of the county after the breach occurred.² And only one recovery may be had on the same bond.³

In an action upon such bond, for failure to furnish books equal to the samples furnished, it is proper for the publisher's representative to testify that book binderies, including that of his own company, occasionally sent out imperfect books.⁴

¹ *Rand, McNally & Co. v. Com.*, 32 Ky. L. Rep. 1168, 108 S. W. 892.

² *Maynard, Merrill & Co. v. Chowning*, 31 Ky. L. Rep. 1340, 105 S. W. 114.

³ *Burton v. Maynard, Merrill & Co.*, 31 Ky. L. Rep. 1342, 105 S. W. 115.

⁴ *Rand, McNally & Co. v. Com.*, 32 Ky. L. Rep. 441, 106 S. W. 238, 108 S. W. 892.

Where the statute requires a bond from a book publisher conditioned that the books adopted shall be sold as cheaply as in other localities or States, a surety on such bond is not liable for his principal's violation of the agreement as to books adopted prior to the execution of the bond.¹ It is no defense to an action for the breach of condition in such bond, that conditions in the contracting State were not similar to those obtaining in other States;² and a plea of no consideration for such bond is of no merit.³

It is not necessary in an action on such bond for the plaintiff to show that the books offered for sale in another State were the same in paper, binding, typography, and other respects, as the sample copy filed with the bond in compliance with the statute.⁴ And in an action brought for the breach of such condition in such bond, the proof of a contract to sell such books at a lower rate is sufficient without showing any actual sales.⁵

The adoption of any book not set out in the bond is void,⁶ and selling at a lesser price in another State is a breach of such bond.⁷ And under a statute which provides that an act required to be done by three or more persons shall be deemed the act of all when done by a majority of them, such bond is valid when approved by two of them.⁸ A breach of such bond can

¹ *Graziani v. Com.*, 30 Ky. L. Rep. 119, 97 S. W. 409.

² *Johnson Pub. Co. v. Com.*, 30 Ky. L. Rep. 148, 97 S. W. 749.

³ *Graziani v. Burton*, 30 Ky. L. Rep. 180, 97 S. W. 800.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Johnson v. Ginn*, 105 Ky. 654, 49 S. W. 470.

⁷ *Com. v. Ginn*, 111 Ky. 110, 63 S. W. 467.

⁸ *Ibid.*

occur only from sales, or contract to sell, made by the publisher, and not from sales made by others without participation therein by such publisher.¹

Where the statute authorizes the County Superintendent to sue for the forfeiture of a bond, collect the judgment and pay the money into the county treasury, he cannot accept in satisfaction less than the whole amount of the judgment; and his act in accepting a note for a lesser amount and entering a satisfaction of the judgment is void.²

§ 106. Studies Prescribed or Prohibited by Parent.

If a pupil attends school it must be presumed he submits himself to the rules, and must attend to all studies that are required of him, under penalty of expulsion. But, in the absence of a statute making education compulsory, the teacher may not punish a pupil for not doing something the parent has requested the pupil be excused from doing.³ A parent may direct his child, attending a public school, to study only certain subjects taught in the school. And if a teacher, having notice of such direction, required the child to study other subjects and whips him for not doing so, it is an unlawful assault.

The right of the parent reasonably to prescribe the subjects which the child is to study is paramount,⁴ and from the mere fact that the parent sends his child

¹ *Mills v. Meyers*, 24 Ky. L. Rep. 971, 70 S. W. 412.

² *Heath & Co. v. Com.*, 129 Ky. 835, 113 S. W. 69.

³ *State v. Mizner*, 50 Iowa 145.

⁴ *People v. Olmstead*, 27 Barb. (N. Y.) 9; *State v. School District*, 31 Neb. 552, 48 N. W. 393.

to a public school may not be implied that he surrenders all control over the direction of the child's studies. The parent's right to make a reasonable selection of the studies which he desires his child to pursue, is superior to that of the school authorities, and such selection if reasonable must be respected by them.¹ And the right of a parent to make a reasonable selection of studies for his child is not limited to any particular grade or school.²

The desires of the parent, however, must be within reason and not exercised arbitrarily. Of course, such prescribing of studies could not be reasonable if the gradation or classification of the school were interfered with.³ And a parent has no right unreasonably and arbitrarily to demand that his child shall be excused from pursuing a certain study in a public school. Notwithstanding such wishes of the parent, the child may be excluded from a public school for refusal to comply with the orders of the school board that pupils shall devote a certain period in the study and practice of music, and provide themselves with certain books therefor.⁴

¹ School Board, &c., *v.* Thompson, 24 Okla. 1, 103 Pac. 578.

² State *v.* Ferguson, 95 Neb. 63, 144 N. W. 1039.

³ Morrow *v.* Wood, 35 Wis. 59.

⁴ State *v.* Webber, 108 Ind. 31, 8 N. E. 708.

CHAPTER IX

OF SCHOOL FUNDS

§ 107. Sources of Funds.

The methods by which school funds are acquired are many and varied. In different States the sources of such revenue include: unclaimed money and valuables found on dead bodies,¹ the money arising from the sale of estrays,² forfeited bail money,³ a portion of the county taxes on property,⁴ escheated property,⁵ dog taxes,⁶ liquor license revenue,⁷ poll tax,⁸ funds not needed for the original purpose,⁹ fines and forfeitures arising under penal laws,¹⁰ railroad tax,¹¹ and general taxation.¹²

¹ *State v. Marion County Com'rs*, 85 Ind. 489.

² *Tippecanoe County v. State*, 92 Ind. 353.

³ *State v. Farrell*, 83 Iowa 661, 49 N. W. 1038.

⁴ *Trustees, &c., v. Ormsby County Com'rs*, 1 Nev. 334.

⁵ *Hinkle's Lessee v. Shadden*, 32 Tenn. 46.

⁶ *Ex parte Cooper*, 3 Tex. App. 489; *Maloy v. Madget*, 47 Ind. 241.

⁷ *State v. Forkner*, 70 Ind. 241; *City of Hastings v. Thorne*, 8 Neb. 160; *State v. Wilcox*, 17 Neb. 219, 22 N. W. 458; *Board, &c., v. Tafoya*, 6 N. M. 292, 27 Pac. 616.

⁸ *Albertville v. Rains*, 107 Ala. 691, 18 So. 255.

⁹ *School District v. Edwards*, 46 Wis. 150, 49 N. W. 968.

¹⁰ *Board, &c., v. Harrodsburg, &c.*, 9 Ky. L. Rep. 605, 7 S. W. 312.

¹¹ *Board, &c., v. Trustees, &c.*, 18 Ky. L. Rep. 103, 35 S. W. 549.

¹² *Opinion of Justices*, 68 Me. 582.

And a gift to a town to apply the income to the support of the public schools in said town in such a way as the town shall judge best, is a gift for a charitable use, which the town may properly take,¹ as also may a parish.²

Where the statute provides that one-half of all moneys received by city or village from a specified source, shall be paid over to the trustees of the school district within the corporate limits of such city or village, the fact that such school district comprises a larger territory than that of such city or village is no excuse for failure to make such payment.³

Although the power is given, in the first instance, to each school district, by vote, to raise money to build or repair schoolhouses for the use of the district, and to locate the same, it is a power which the school district cannot delegate,⁴ but which jurisdiction, on their unreasonable neglect or refusal, devolves on the selectmen of the town as agents of the municipality.⁵

§ 108. Borrowing Money.

The power given by statute to a school board to make all arrangements necessary to the efficient operation of the public schools does not authorize the borrowing of money.⁶ The statute, however, may specifically

¹ *Davis v. Barnstable*, 154 Mass. 224, 28 N. E. 165.

² *Sutton, &c., v. Cole*, 3 Pick. (Mass.) 232.

³ *School District, &c., v. Village, &c.*, 13 Idaho 471, 90 Pac. 735.

⁴ *Benjamin v. Hull*, 17 Wend. (N. Y.) 437.

⁵ *Blake v. Sturtevant*, 12 N. H. 567; *Christ v. Brownsville Tp.*, 10 Ind. 461; *Heal v. Jefferson Tp.*, 15 Ind. 431.

⁶ *Board, &c., v. Fudge*, 4 Ga. App. 637, 62 S. E. 154.

authorize a school district to borrow money, but if the statute provides that money for a specific purpose shall be raised by taxation, it cannot lawfully be raised by borrowing and issuing bonds.¹

A vote to borrow money, passed at a district meeting illegally held, creates no liability by which the district may be held to repay money borrowed in pursuance of such vote.² Money borrowed by a school board is not a part of the common school fund, and on a bond given by a school commissioner conditioned for the faithful discharge of the duties required of him by virtue of his office, the sureties are not liable for his improper disbursement of such money.³

§ 109. Promissory Notes.

In some States it is held that a *quasi* corporation may bind itself by a negotiable promissory note or bill of exchange for any debt contracted in the course of its legitimate business, for any expenses incurred in any matter or thing which it is authorized to do, or any matter which is not foreign to the purposes of its creation; and when, by statute, an additional power is given to raise money by taxation, this pre-existing power to bind itself is not thereby taken away.⁴

But in Illinois it has been held that a school board cannot make a valid promissory note which will bind

¹ Richardson v. McReynolds, 114 Mo. 641, 21 S. W. 901.

² Lander v. School District, &c., 33 Me. 239.

³ Board, &c., v. Fudge, 4 Ga. App. 637, 62 S. E. 154.

⁴ Clarke v. School District, &c., 3 R. I. 199; School District v. Thompson, 5 Minn. 280; Robbins v. School District, 10 Minn. 340.

the district, without a vote of the electors.¹ And in Indiana it has been held that although they have the power to make a lawful promissory note such note is not subject to the conditions of the law merchant.²

Where a school district has authority to incur a debt, the directors have authority to make a promissory note in payment thereof, as in payment for work done on a school building.³

The words "School Trustees" after the signatures of the makers of a note are *descriptio personarum*, and the note is not that of the school corporation.⁴

§ 110. Custodian and Depositary.

The treasurer of a school district, who is proper custodian of the district funds, may demand from the collector any funds already collected, and on default of payment may bring suit to recover.⁵

In Iowa it has been held that a school district treasurer who selects a bank as a depositary of school funds, in good faith and without negligence, is, in case of loss, not guilty of a breach of his official bond.⁶ But the general rule is that he is absolutely responsible.⁷

Where the statute provides that the treasurer of a school district shall "hold" all moneys belonging to the district it does not mean that such treasurer shall

¹ School Directors *v.* Miller, 54 Ill. 338.

² Sheffield, &c., *v.* Andress, 56 Ind. 157.

³ *Ibid.*

⁴ Trustees, &c., *v.* Rautenberg, 88 Ill. 219.

⁵ Hendricks *v.* Bobo, 12 La. An. 620. See also, § 60, *supra*.

⁶ Hansen *v.* Holstein, 155 Iowa 264, 135 N. W. 1090.

⁷ See § 60, *supra*.

at all times keep the moneys in his physical possession but allows him to deposit the money in a reputable and solvent bank to his credit as treasurer.¹ And where a school board through caprice, favoritism and arbitrary action, award the funds to a depositary which is the lowest bidder, this is a ministerial act, or executive function, against which a *mandamus* will lie to compel such board to award the school funds to the highest bidder.²

§ 111. Certificates of Indebtedness. — Warrants.

The power to draw orders, sometimes termed warrants, or certificates of indebtedness, upon the school fund, is a personal trust which cannot be delegated, therefore such orders must be executed in person by each of the directors and the execution thereof cannot be delegated by the board to one of their number. And where the statute requires that such order shall show on its face the purpose for which the order was drawn, the provision is mandatory, and if not so drawn the order is void; nor can it be made valid by the action of that or any succeeding board.³ Likewise, when the statute prescribes a form for orders to be drawn upon the treasurer it must be followed.⁴

The indorsee of a school order is in no better position than the payee, and takes it subject to all its infirmities, such as *ultra vires*, and want or failure of con-

¹ Hunt *v.* Hapley, 120 Iowa 695, 95 N. W. 205. But see, School District, &c., *v.* Carson, 10 Kan. 238.

² First Nat'l Bk. *v.* Bourne, 131 S. W. (Mo.) 896.

³ Glidden *v.* Hopkins, 47 Ill. 525.

⁴ Clark *v.* School Directors, &c., 78 Ill. 474.

sideration. Such order has in this respect none of the elements of commercial paper, and a school district is not estopped, even as against a *bona fide* holder for value, to avail itself of any defense which it would have had in an action brought by the payee.¹

School warrants do not possess the qualities of negotiable paper, and the purchaser takes them subject to all equities existing against the original holder,² and they are not so negotiable that they are governed by the law of bills and notes.³ There can be no innocent holder of a school warrant issued contrary to law.⁴ And in absence of statute so providing, a school warrant does not bear interest.⁵

In an action brought by an indorsee of a school order where a school district board had entered into a contract for the erection of a schoolhouse, and issued orders in payment thereof before any work was done, and had not been authorized to do so by a vote of the electors of the district, and the schoolhouse was not

¹ *School District v. Stough*, 4 Neb. 357; *School District v. Lombard*, 2 Dill. (U. S. C. C.) 493; *Emery v. Mariaville*, 56 Me. 315; *Smith v. Cheshire*, 13 Gray (Mass.) 318; *Axt v. Jackson, &c.*, 90 Ind. 101; *Shakespear v. Smith*, 77 Cal. 638, 20 Pac. 294; *Newell v. School Directors*, 68 Ill. 514; *Boyd v. Mill Creek, &c.*, 114 Ind. 210, 16 N. E. 511; *National, &c., v. Independent, &c.*, 39 Iowa 490; *First Nat'l Bank v. Rush, &c.*, 81 Pa. St. 307; *School District, &c., v. Western, &c.*, 5 Wyo. 185, 38 Pac. 922.

² *State v. Melcher*, 87 Neb. 359, 127 N. W. 241.

³ *Gray v. Board, &c.*, 231 Ill. 63, 83 N. E. 95; *Davis v. Steuben, &c.*, 19 Ind. App. 694, 50 N. E. 1; *Wright v. Kinney*, 123 N. C. 618, 31 S. E. 874; *Kellogg v. School District, &c.*, 13 Okla. 285, 74 Pac. 110; *Fine v. Stewart*, 48 S. W. (Tenn.) 371. But see, *Blaisdell v. School District, &c.*, 72 Vt. 63, 47 Atl. 173.

⁴ *First Nat'l Bk. v. Whisenhunt*, 94 Ark. 583, 127 S. W. 968.

⁵ *A. H. Andrews Co. v. Delight, &c.*, 95 Ark. 26, 128 S. W. 361.

erected, although the directors had secured from the contractor a bond for the faithful performance of the contract, the district was not liable on such orders thus illegally issued.

A school board has no authority to draw orders except on funds in the treasury, held for the purposes for which the orders are drawn, and an order drawn on a fund which has merely been proposed by vote of the district, but not raised by taxation, is illegal. Credit of a district cannot be pledged unless authorized by statute.¹ And the statements, acts, conduct, or promises of the officers of a school district cannot operate to estop the district from pleading want of authority, or of consideration, as a defense to a suit on a certificate of indebtedness.²

A school order, or warrant, regular upon its face, is *prima facie* binding and legal. Its apparent validity may be impeached by showing that the officers were not properly authorized, but that is matter of defense.³

There is no privity of contract between a city and the holders of school warrants who are exclusively creditors of the school board, the school directors not being the same corporate body as the city, even though the geographical limits of district and city are identical.⁴

¹ School District *v.* Stough, 4 Neb. 357; Kane *v.* School District, &c., 52 Wis. 502, 9 N. W. 459.

² Axt *v.* Jackson, &c., 90 Ind. 101; Goose River, &c., *v.* Willow Lake, &c., 1 N. D. 26, 44 N. W. 1002.

³ Meyer *v.* School District, &c., 4 S. D. 420, 57 N. W. 68.

⁴ Labatt *v.* New Orleans, 38 La. An. 289; Fisher *v.* Board, &c., 44 La. An. 184, 10 So. 494.

Where an oral contract is made for goods, the issuance of a school township warrant in payment therefor does not create a written contract into which the oral contract is merged.¹ Such warrant alone creates no liability against the township, and to sustain an action based thereon, it must be shown what it was given for, and that a legal liability was thereby created.²

School warrants need not bear the corporate seal, it being sufficient that they are signed by the president and countersigned by the clerk of the board.³ And where school warrants show on their face that they are obligations of the district, and not of the directors, although illegally issued, they do not make the directors personally liable.⁴

A school warrant issued in violation of the statute is void.⁵ And the power of the legislature is such that it may provide that school debts may be paid in bills of the State bank of the State.⁶

§ 112. Apportionment of Funds.

The making of an estimate, as required by statute, of the proportion of the general school fund which may be distributed during the then current year among the districts of the county which shall belong to each district, does not by the mere making of such estimate

¹ *Mitchelltree, &c., v. Carnahan*, 42 Ind. App. 473, 84 N. E. 520.

² *Ibid.*

³ *Hopley v. Benton*, 39 Okl. 223, 132 Pac. 808.

⁴ *First Nat'l Bk. v. Whisenhunt*, 94 Ark. 583, 127 S. W. 968.

⁵ *Rochford v. School District, &c.*, 19 S. D. 435, 103 N. W. 763.

⁶ *Bush v. Shipman*, 5 Ill. 190.

vest in the several districts the ownership of their respective shares.¹

School moneys in the hands of the commissioners of common schools is not subject to control by the superintendent of those schools, therefore when no appeal or other proceeding is pending before him he has no authority to direct the commissioners of a town to retain in their hands subject to his future order the money about to be apportioned according to law to a school district for a teacher's salary.²

A County Treasurer may question the right of a County Superintendent to issue an order apportioning school funds when the drawing of such an order is merely a ministerial act.³ But a State Comptroller cannot be compelled by a teacher to apportion a school as required by law.⁴

Upon the division of a school district into separate school districts, the school fund is to be apportioned to each, based on school enumeration.⁵ And a school district formed out of an older one is entitled to share *pro rata* in the State appropriation for school purposes for the current year.⁶

Where a county, in pursuance of the terms of a statute, has been divided into school districts, and the voters have authorized the levy of an educational tax to supplement the State funds, the apportionment

¹ Cooke v. School District, &c., 12 Colo. 453, 21 Pac. 496, 719.

² Bennett v. Burch, 1 Denio (N. Y.) 141.

³ School District, &c., v. Lambert, 28 Oreg. 209, 42 Pac. 221.

⁴ Yost v. Gaines, 78 Tenn. 576.

⁵ Towle v. Brown, 110 Ind. 599, 10 N. E. 628.

⁶ Lower Allen, &c., v. Shiremanstown, &c., 91 Pa. St. 182.

of the fund by the county board of education may be made on the basis of school attendance.¹

§ 113. Misapplication of Funds.

When the statute prescribes terms upon which school directors may borrow money for certain enumerated purposes, it is their duty to pay it over to the treasurer at once, he being the only proper custodian of such funds, and if they place the funds with any other person it is at their own risk.² Such payment to one not authorized to receive it is a conversion, for which an action without demand may be brought against one making such illegal payment.³ But the improper disbursement of funds by one member of a school board who is acting as treasurer does not make the other members of the board liable unless they participate in such illegal disbursement.⁴

A member of a school corporation has a right to invoke the interference of a court of equity to practically coerce a reluctant corporation to enforce its legal rights against its officers and their confederates, but equitable considerations will guide or control in granting or withholding relief. The court will not coerce the enforcement of a strict legal right, however clear, if thereby injustice and inequity will be done. Consequently, when the plaintiff and all other taxpayers of a school district have been cognizant of the

¹ *Webb v. Jackson*, 141 Ga. 55, 80 S. E. 274.

² *Adams v. State*, 82 Ill. 132.

³ *Knowlton v. Logansport*, 75 Ind. 103.

⁴ *State v. Julian*, 93 Ind. 292.

manner of conducting a school in that it was characterized by sectarian instruction, and that the electors of the district had been informed each year that the public school fund had been expended for that purpose, and, without protest from any, at each meeting directed like expenditures for the ensuing year, and on the faith of such acquiescence, believing that the taxpayers approved, the school district officers parted with the money, the plaintiff cannot equitably ask that such officers be compelled to repay such moneys as were so expended.¹

A superintendent may be enjoined from paying any part of the school fund to teachers in a private school,² even if directed by an unconstitutional act of the legislature. And teachers in a public school who have not yet finished their term of employment may maintain an equitable action against such misapplication of the fund from which they are to be paid. The legislature has no power to divide a school fund merely because the public school building is not large enough to accommodate all the children in the district.³

If a County Superintendent wrongfully pays into the State treasury moneys of the school fund due to a person under a contract, he becomes personally liable to such person for the amount.⁴ And if money be illegally paid by the State authorities to a school

¹ *Dorner v. School District*, 137 Wis. 147, 118 N. W. 353.

² *Underwood v. Wood*, 93 Ky. 177, 19 S. W. 405.

³ *Ibid.*

⁴ *Wilson v. Hite*, 21 Ky. L. Rep. 1199, 54 S. W. 726.

board not entitled to it, the injured school board to which it rightfully belongs may recover such funds from the other school board. And even if such funds have been invested in property to which it can be traced the property may be recovered.¹

Misapplication of funds by school directors, as in payment of a teacher for services during a period when he was not employed in the service of the district, makes them personally liable to the district for the misapplied funds.² And a school board has no authority to use funds for any purpose other than that for which it was voted by the electors of the district.³ Nor can a school committee vote public funds for private uses no matter how meritorious may be the purpose.⁴

§ 114. Loans of Funds.

A loan of public school money should be made in the manner prescribed by law, but a note or mortgage taken for such loan if not in accordance with law is not thereby invalid,⁵ although it is such a misapplication of the fund that it will make the trustees personally liable.⁶ And if the statute requires that loans from the school fund be secured by a mortgage on unincumbered real estate, a mortgage given therefor

¹ East Carroll Parish, &c., v. Union Parish, &c., 36 La. An. 806.

² Dickinson v. Linn, 36 Pa. St. 431.

³ Drew v. Madison, 146 Iowa 721, 125 N. W. 815.

⁴ Whittaker v. Salem, 216 Mass. 483, 104 N. E. 359.

⁵ Littlewort v. Davis, 50 Miss. 403; Edwards v. Trustees, 30 Ill. App. 528; Mann v. Best, 62 Mo. 491.

⁶ Littlewort v. Davis, 50 Miss. 403.

is not invalid for the reason that the land was incumbered.¹ The recording of a school fund mortgage is not necessary to give notice to parties claiming through the mortgagor,² when the statute provides that mortgages taken for loans of the school fund shall be considered to be of record from the date thereof, and shall have priority over all mortgages and conveyances not previously recorded.³

A State cannot be guilty of *laches* through its agent's neglect in the management of school funds, therefore a surety for a loan of money from the school funds can have no relief in a claim of such *laches*.⁴

The statute in force at the time of sale of land mortgaged to secure a loan from school funds, governs the sale thereof.⁵

§ 115. Lack of Funds.

If a school trustee finds that the district lacks funds to pay a legally hired teacher, he may advance the necessary funds and look to the corporation for reimbursement.⁶ But a school board cannot incur any debt to be paid out of the school money of any subsequent year,⁷ and a court of equity has jurisdiction of a suit by and on behalf of a resident taxpayer of the

¹ Sharp's Adm'r v. Collins, 74 Mo. 266; Deming v. State, 23 Ind. 416.

² Stockwell v. State, 101 Ind. 1; West v. Wright, 98 Ind. 335.

³ Mann v. State, 116 Ind. 383, 19 N. E. 181.

⁴ Ray County v. Bentley, 49 Mo. 236.

⁵ McPheeters v. Wright, 110 Ind. 519, 10 N. E. 634.

⁶ Kiefer v. Troy, &c., 102 Ind. 279, 1 N. E. 560.

⁷ Honaker v. Board, &c., 42 W. Va. 170, 24 S. E. 544.

school district brought to set aside and hold for naught such contract made by a board of education.¹

§ 116. School Bonds.

When authorized by statute, school districts may issue bonds for such purposes as are authorized by the statute.² And it has been held that the power to issue bonds is implied from a statute authorizing school districts to borrow money,³ but that does not seem to be the general law.⁴

When the power to issue school bonds is given by statute it is usually upon condition that a vote of the electors of the district is necessary to authorize the issue and define the purposes therefor.⁵ And if the meeting is not legally called, the bonds issued in pursuance of a vote are invalid even in the hands of a *bona fide* purchaser for value,⁶ unless every voter of the district is present at the meeting.⁷ By a majority vote necessary

¹ *Shinn v. Ripley, &c.*, 39 W. Va. 497, 20 S. E. 604; *Crampton v. Zabriskie*, 101 U. S. 601, 25 L. ed. 1070; *Dillon Munic. Corp.*, 5th ed., § 1579, *et seq.*

² *Chamberlain v. Board, &c.*, 58 N. J. L. 347, 33 Atl. 923; *Sherlock v. Winnetka*, 68 Ill. 530; *State v. Moore*, 45 Neb. 12, 63 N. W. 130; *Erwin v. St. Joseph, &c.*, 12 Fed. 680; *Board, &c., v. Welch*, 51 Kan. 792, 33 Pac. 654.

³ *State v. School District*, 13 Neb. 82.

⁴ *Ashuelot National Bank v. School District*, 56 Fed. 197; *Folsom v. School Directors, &c.*, 91 Ill. 402.

⁵ *People v. Caruthers, &c.*, 102 Cal. 184, 36 Pac. 396; *People v. Sisson*, 98 Ill. 335; *Board, &c., v. Moore*, 17 Minn. 412; *Heard v. Calhoun, &c.*, 45 Mo. App. 660; *Richardson v. McReynolds*, 114 Mo. 641, 21 S. W. 901; *State v. School District, &c.*, 15 Mont. 133, 38 Pac. 462; *Smith v. Proctor*, 130 N. Y. 319, 29 N. E. 312.

⁶ *State v. School District, &c.*, 10 Neb. 544, 7 N. W. 315.

⁷ *State v. School District, &c.*, 13 Neb. 466, 14 N. W. 382.

to the issue of bonds is meant a majority of those voting, and not a majority of all voters present at a meeting.¹ If a school bond in the hands of an innocent *bona fide* purchaser recites that it was issued according to law and by vote, the district is estopped to deny the vote.² But if it recites that it was issued for a specific purpose as authorized by statute, and the statute does not so authorize, the validity may be denied by the district.³

A purchaser of a school bond is charged with notice at his peril, of the constitutional limitations on the power of the district to become indebted.⁴ And in an action on a school bond the plaintiff must prove that all the steps necessary to confer the authority to issue have been taken, whether or not the bond recites that these steps were taken.⁵

In Kentucky it has been held that the issuance of school bonds in excess of the amount allowed by law, if otherwise legal, is void only as to the excess.⁶ But in Missouri it has been held that where a school district issues bonds in excess of the debt limit they are wholly void, and cannot be held good for an amount within the debt limit.⁷

¹ *Smith v. Proctor*, 130 N. Y. 319, 29 N. E. 312.

² *Bolton v. Board, &c.*, 1 Ill. App. 193.

³ *State v. School District, &c.*, 16 Neb. 182, 20 N. W. 209.

⁴ *Halliday v. Hildebrandt*, 97 Iowa 177, 66 N. W. 89.

⁵ *Heard v. Calhoun, &c.*, 45 Mo. App. 660.

⁶ *McKinney v. Board, &c.*, 144 Ky. 85, 137 S. W. 839.

⁷ *Thornburgh v. School District, &c.*, 175 Mo. 12, 75 S. W. 81.

CHAPTER X

OF SCHOOL TAXES

§ 117. Power to Levy.

It is the imperative duty of the State to bring a sound education within reach of all the inhabitants, and the extent of this duty is a question of public policy, not for the courts, but for the people, or the legislature, to decide.¹

If the legislature prescribes an amount that towns are compelled to provide under a penalty for the support of the public schools such provision is not a definition or limit of the public schools which they have authority to provide for by taxation, but the provision is to be taken in connection with the broader power given to towns to grant and vote money as they shall judge necessary for the support of schools, and also with the whole course of policy and of legislation on the same subject. In this view a town has power to raise money by taxation for the support of a public school designed to teach higher branches than is provided for in the statutes.²

¹ *Com. v. Hartman*, 17 Pa. St. 118; *Powell v. Board, &c.*, 97 Ill. 375; *Bellmeyer v. School District*, 44 Iowa 564.

² *Cushing v. Newburyport*, 10 Metc. (Mass.) 508; *Bull v. Read*, 13 Grat. (Va.) 78; *Landis v. School District*, 57 N. J. L. 509, 31 Atl. 1017.

A school district may levy a tax only when clearly authorized by statute to do so. If there is fair doubt as to the existence of the right it must be denied.¹ And where the statute repeals all laws on the subject of taxation, "except those enacted for municipal purposes", it does not repeal an act providing a system of taxation for such schools, inasmuch as it is enacted for such municipal purposes.²

A school district is a body corporate, upon which certain limited powers are conferred by statute. And the legal voters within limits may at a lawful meeting raise money for erecting and repairing schoolhouses, and for purchasing libraries, school apparatus, fuel, furniture and other articles necessary for the use of schools.³ And a town may provide town schools beyond those required by statute, and if such schools are in good faith for the common and general benefit of the inhabitants, the town may levy taxes for the support of them.⁴

§ 118. Meeting to Authorize Levy.

A special tax for school purposes can only be levied after the question has been submitted to the qualified electors of the school district in the manner pointed out by the statute. And in an action to recover such taxes it is not sufficient to allege in general terms that

¹ *Marion M. R. Co. v. Alexander*, 63 Kan. 72, 64 Pac. 978.

² *Horton v. Mobile, &c.*, 43 Ala. 598; *Ballentine v. Pulaski*, 83 Tenn. 633; *State v. Bremond*, 38 Tex. 116. But see, *Nelson v. Homer*, 48 La. An. 258, 19 So. 271.

³ *Little v. Little*, 131 Mass. 367.

⁴ *Cushing v. Newburyport*, 10 Metc. (Mass.) 508.

the tax was duly levied, and that the levy and all proceedings prior and subsequent thereto, were made and had under and in pursuance of a vote and election theretofor had and held by the qualified electors of the district, in pursuance of law. There is no power to levy a school tax, except on a vote of the electors, had in a prescribed method; and the holding of such an election is a jurisdictional fact, lying at the foundation of the proceedings. It is a fact on which the defendant is entitled to take issue, and if denied must be proved. It is, therefore, necessary to aver it with precision, and in such manner as to admit of a direct issue upon the facts averred.¹ And in an action to collect an unpaid school tax voted by the district, where the defense is that the election was void, the burden of so proving is on the taxpayer.²

Where at an annual meeting of a school district a vote to levy a tax has been decided adversely, a special meeting of the electors of the school district may be held to again take action on the same subject.³ And where the statute provides that after a vote to levy no school tax, no election for that purpose shall be ordered until after the expiration of one year, an order for an election within the year is valid providing the election is not held within the year.⁴

¹ *People v. Castro*, 39 Cal. 65; *Com. v. Louisville, &c.*, 17 Ky. L. Rep. 991, 33 S. W. 204.

² *Trustees, &c., v. Garvey*, 80 Ky. 159.

³ *Stanton v. Board, &c.*, 70 N. J. L. 336, 57 Atl. 1133.

⁴ *Parks v. West*, 108 S. W. (Tex.) 466.

The electors of a school district are not entitled to vote on the question of rescinding a former vote that a schoolhouse tax be levied, where the tax has been certified, levied, and partly paid.¹

A tax voted by a majority of the electors of a school district is not made void by a mere irregularity in holding the election.² Such statutes as prescribe the method of ascertaining the will of the people in matters pertaining to taxes for school purposes, should be interpreted with great liberality in view of the great public purposes to be accomplished, and mere irregularities should be disregarded.³

§ 119. Purposes of Levy.

A school tax may be levied only for educational or building purposes.⁴ And if a tax levy is void for failure to specify the purposes thereof, a valid levy may be subsequently made.⁵

A tax for heating and repairing purposes is a tax for school or educational purposes, and not for building purposes.⁶ And a tax levied for "building purposes" to pay the expenses for repairs, grading and tiling around a schoolhouse are improper. Such expenses should be met by a tax for "school purposes."⁷

In laying a tax for a school district a general state-

¹ *Kirchner v. Board, &c.*, 141 Iowa 43, 118 N. W. 51.

² *Trustees, &c., v. Garvey*, 80 Ky. 159.

³ *McNees v. McGill*, 4 Ky. L. Rep. 632.

⁴ *St. Louis, &c., v. People*, 224 Ill. 155, 79 N. E. 664.

⁵ *Morrell, &c., v. Com.*, 32 Ky. L. Rep. 1383, 108 S. W. 926.

⁶ *Chicago & A. R. Co. v. People*, 163 Ill. 616, 45 N. E. 123;
Wabash R. Co. v. People, 187 Ill. 289, 58 N. E. 254.

⁷ *People v. Toledo, &c.*, 231 Ill. 514, 83 N. E. 193.

ment of the purposes, such as "for defraying the expenses of the district, as reported by our committee" is sufficiently specific, and the particular object for which the tax is laid need not be specified.¹

So long as the possession of land purchased for school purposes remains in the possession of the district, the collection of a tax levied for the purchase thereof cannot be resisted on the ground that the title to the land is defective.² And a tax may be legally voted for the construction of a new schoolhouse before the site is procured.³

A constitutional provision that "All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended", means the town or city in which the school is, where tuition is given, and where payment for it is to be made, rather than the town or city that makes the payment.⁴

The collection of a legally levied school tax cannot be enjoined on the ground that it is proposed to apply

¹ *West, &c., v. Merrills*, 12 Conn. 437; *State v. Wolfrom*, 25 Wis. 468. But see, *State v. Cole*, 51 N. J. L. 277, 18 Atl. 52.

² *People v. Sisson*, 98 Ill. 335.

³ *Williams v. Larkin*, 3 Denio (N. Y.) 114; *Colton v. Beardsley*, 38 Barb. (N. Y.) 29; *Seaman v. Baughman*, 82 Iowa 216, 47 N. W. 1091.

⁴ *Fiske v. Huntington*, 179 Mass. 571, 61 N. E. 260.

the tax to a purpose other than that for which it was levied.¹

§ 120. Amount of Levy.

The vote of the electors of a district authorizing the levy of a tax, must specify a definite amount to be raised, and not leave that to be determined by the trustees.² Where, however, the amount of four hundred dollars was voted to be raised by tax to defray the expenses of building a new schoolhouse, and another vote authorized the trustees to sell the old schoolhouse, appropriate the avails toward the erection of the new building, and raise the balance by tax, it was held that no discretionary power was conferred upon the trustees in respect to the amount of the tax, and that they were authorized to collect the balance of the sum specified after deducting the avails of the sale of the old schoolhouse.³

§ 121. Manner of Levying.

The manner of levying taxes for school purposes is the same, and on the same species of property, as those for town, county, and State purposes. Therefore a corporation within a school district is taxable to the full amount of its capital stock in absence of a claim for reduction.⁴

¹ *Cleveland C. C. & St. L. Ry. Co. v. People*, 208 Ill. 9, 69 N. E. 832.

² *Robinson v. Dodge*, 18 Johns. (N. Y.) 351. But see, *Adams v. Hyde*, 27 Vt. 221.

³ *Trumbull v. White*, 5 Hill (N. Y.) 46. See also, *Ackerman v. Vail*, 4 Denio (N. Y.) 297; *Myer v. Crispell*, 28 Barb. (N. Y.) 54.

⁴ *Chadwick v. Crapsey*, 35 N. Y. 196; *Stephens v. School District, &c.*, 6 Oreg. 353.

And where the school directors are authorized to levy a tax for school purposes, they may levy such tax annually although the statute does not expressly so provide.¹

Where the statute provides for the levying of a special tax all the requirements of the statute in regard to the making of such levy must be strictly followed.²

§ 122. Apportionment of Taxes.

The principle on which taxation is founded is that the taxpayer is supposed to receive just compensation in the benefits conferred by government, and in the proper application of the tax, and that in the exercise of the taxing power the legislature ought, as nearly as practicable, to apportion the tax according to the benefit which each taxpayer is supposed to receive from the object upon which the tax is expended. But the power of apportionment is included in the power to impose taxes, and is vested in the legislature; and in the absence of any constitutional restraint, the exercise by it of such power of apportionment cannot be reviewed by the courts.³

The constitutions of some States have special provisions designed to guard against an inequitable exercise of the power of apportionment and to secure equality in the distribution of the public burdens. Where such provisions are violated they are cognizable

¹ Peay v. Talbot, 39 Tex. 335.

² Cooley on Taxation, 334; Bramwell v. Guheen, 3 Idaho 347, 29 Pac. 110.

³ People v. Mayer, &c., 4 N. Y. 419.

by the courts. In New York, however, the legislature is subject to no such restraints and therefore may unrestrainedly determine how such taxes shall be apportioned.¹

In apportioning taxation for educational purposes, equality of distribution must be the aim of the law, without bestowing special favors upon privileged classes. The benefits to the public to be considered as a whole as received in taxation are direct benefits.² But the benefits may not be direct to each individual. By taxation we may receive a benefit in security of person, property, reputation or other social benefits. In school taxation the taxpayer may not receive a benefit in the instruction of his own children, for he may have none, yet he receives it in the general improvement of the intellectual and social conditions of his neighborhood, rendering his property more secure, and in the form of advantages in doing business or having labor performed more intelligently.

§ 123. What Property is Taxable.

The assessment of taxes for school purposes, laid upon real estate, must be confined to land within the school district.³ And where a parcel of land on which a school tax is levied lies partly within and partly without the district, the entire parcel cannot be sold for non-payment of the taxes levied upon it.⁴

¹ *Providence Bank v. Billings*, 4 Pet. (U. S.) 514, 7 L. ed. 939; *Brewster v. Syracuse*, 19 N. Y. 116; *Gordon v. Cornes*, 47 N. Y. 608.

² *Gordon v. Cornes*, 47 N. Y. 608.

³ *Saranac, &c., v. Roberts*, 208 N. Y. 288, 101 N. E. 898.

⁴ *Shaw v. Lockett*, 14 Colo. App. 413, 60 Pac. 363.

A school district tax can only be assessed upon the personal property which is lawfully included in the valuation of the town as belonging to its inhabitants.¹ And where the statute provides that "every inhabitant of the district shall be taxed in the district in which he lives, for all his personal estate", these words are not to be taken literally, as all his personal property of every kind whatever, but are to be construed with reference to other provisions of the statutes, as subject to all lawful exemptions, and as including only the personal estate liable to be taxed for municipal purposes in the town where the district is situated.²

The statutes of the United States provide that the shares of stock in a national bank may be included in the valuation of the personal property of the owner in assessing taxes imposed by the State within which the bank is situated; and that the legislature of each State may determine the manner and place of taxing such shares, subject only to the restrictions that the taxation shall not be at a greater rate than is assessed upon other capital, and that the shares of non-residents shall be taxed where the bank is situated.³ Where the State Legislature has provided for such taxation by enacting that such stock "shall be assessed to the owners thereof in the cities or towns where such banks are located, and not elsewhere, in the assessment of all State, county, and town taxes imposed and levied

¹ *Little v. Little*, 131 Mass. 367.

² *Ibid.*; *Bates v. Weymouth*, 9 Gray (Mass.) 433.

³ U. S. Rev. Stats. § 5219.

in such place by the authority of law, whether such owner is a resident of said city or not " the stock of a national bank, owned by an inhabitant of a school district in a town other than the one in which the bank is located, cannot be taxed to assist in the building of a schoolhouse in the district in which the owner of the stock lives, the bank not being located within the same district.¹

General statutes upon the subject of taxing property refer to private property, and not to that owned by the State, nor to that of municipalities held for public use.² But the State if it sees fit may subject to taxation the property owned by its municipal divisions in common with other property.³

§ 124. Certificate of Levy.

A school tax must be based on a lawful certificate or it is void. And accordingly such tax is void if the certificate is not made until after the meeting of the board at which the tax is voted, and is signed by the directors at different times and places.⁴ But it has been held that a school tax levied by a board of education is not made invalid by the fact that in signing the certificates thereof the board attached the word " Directors " to their names.⁵ And a certificate

¹ *Little v. Little*, 131 Mass. 367.

² *Dillon Munic. Corp.*, 5th ed., § 1396.

³ *Trustees, &c., v. Trenton*, 30 N. J. Eq. 667; *Matter of Hamilton*, 148 N. Y. 310, 42 N. E. 717.

⁴ *St. Louis, &c., R. Co. v. People*, 177 Ill. 78, 52 N. E. 364; *Chicago, &c., Ry. Co. v. People*, 184 Ill. 240, 56 N. E. 367.

⁵ *Cairo, &c., v. Mathews*, 152 Ill. 153, 38 N. E. 623. See also, *Chicago, &c., v. People*, 155 Ill. 276, 40 N. E. 602.

improperly signed may be amended by leave of court.¹

But if the purposes for which a tax is voted are not shown in the vote of a district meeting, the trustees are not authorized to make a certificate to the assessors. A defective certificate cannot be held to be a mere irregularity. That paper confers upon the assessors an authority to levy the taxes, and its substantial correctness is essential to the validity of the assessment based upon it.²

§ 125. Assessing of Taxes.

Where the statute does not provide a method of valuation it is proper to assess upon the valuation of property taken in reference to the town taxes for the same year.³ And a legitimate method of assessing an educational tax is to take the returns of the county tax receiver, and assess the percentage named by the board of education upon the property therein returned.⁴

It is not necessary to withhold the assessment of a tax until the very day the money is required for use, in order to avoid making an illegal assessment for future expenses which are unascertained, even though the rule exists that the tax shall not be assessed until the money is required. Such taxes may be assessed

¹ *Spring Valley, &c., v. People*, 157 Ill. 543, 41 N. E. 874; *Keokuk, &c., v. People*, 161 Ill. 132, 43 N. E. 691.

² *State v. Browning*, 28 N. J. L. 556; *Cochran v. Garabrant*, 32 N. J. L. 444; *Pond v. Negus*, 3 Mass. 230.

³ *Waldron v. Lee*, 5 Pick. (Mass.) 323; *Adams v. Hyde*, 27 Vt. 221.

⁴ *Smith v. Bohler*, 72 Ga. 546.

long enough beforehand to have the money at hand when needed.¹

Where the statute provides that the board of education may assess upon a subdistrict such portion of the cost of a new schoolhouse as they shall deem just, they may in their discretion assess upon the subdistrict the entire cost thereof.²

The debt of a school tax is fixed by the assessment. Therefore, if after a tax has been voted and assessed on the inhabitants of a school district, part of the district is set off into another district, the inhabitants of the set off part remain liable to pay the tax.³ But if the part of the district is set off before the assessment, even though the tax had theretofore been laid and expenses incurred in behalf of the purpose for which it was assessed, the inhabitants of the set off part are not subject to the assessment.⁴ And a school tax is not a special assessment.⁵

If the record of a town meeting fails to show that a vote to re-establish the school district system was a "two-thirds vote" as required by the statute, the vote is invalid, and if not so announced by the moderator no subsequent amendment by the clerk of the meeting can cure the defect. The clerk of a town is a sworn officer having custody of the records, and is presumed to know the facts, and if he states what is

¹ Brock v. Bruce, 59 Vt. 313, 10 Atl. 93.

² Bryant v. Goodwin, 9 Ohio 471.

³ Waldron v. Lee, 5 Pick. (Mass.) 323; Dyer v. School District, 61 Vt. 96, 17 Atl. 788.

⁴ Jackman v. Salisbury, 5 Gray (Mass.) 413.

⁵ Louisiana, &c., v. State Board, 120 La. 471, 45 So. 394.

not true, may be punished for fraudulent conduct in his office. But he cannot, by inserting in his records any statements of facts or opinions which are not properly matters of record, make such statements evidence for or against the town. There is no doubt, however, that a clerk having continued in office, has a right to amend his record by adding any votes or other transactions of the meeting accidentally omitted, and which are properly matters of record.¹ But he should record votes only as declared by the moderator, and cannot properly insert in the record any different declaration founded upon his private count or judgment of the number of voters upon each side.

Consequently, it was held that if a school district was not established according to law, the assessors will be liable in an action of tort, for issuing a warrant in the collection of a school district tax assessed by them, although one acting as clerk of the district certified to them that the tax had been voted by the district.²

Where the statute directs the assessors to assess the tax within thirty days after the certificate, and does not contain negative words restraining them from making the assessment after that period has elapsed, such provision is directory only and must not be considered as a limitation on their authority, and they may make the assessment thereafter. And if an assessment and warrant are illegal, they may be revoked, and a new warrant issued either by the present board of assessors or their successors unless the statute

¹ *Halleck v. Boylston*, 117 Mass. 469.

² *Judd v. Thompson*, 125 Mass. 553.

provides that the assessment must be made by the assessors in office when the vote was passed, and for this purpose the clerk may make a second certificate.¹ The omission of assessors to tax particular property, through misinformation, mistake of fact, or error of judgment does not render the whole tax void.² But a school tax assessed on only part of a school district is void.³

The legislature has the power to legalize irregularities in the assessment of school taxes.⁴

§ 126. Constitutionality of Levy.

Although the scheme of taxation of district schools differs from that of taxation of county schools within the same State, it is not a violation of the uniformity required by the constitution.⁵

A tax law should contain proper and requisite precautionary legal sanctions and securities, adjust the amount of tax to the necessities of the district, allow appeals for the taxpayers for equalization of assessments, and require those who levy the tax to take oath of fidelity and give bonds for the faithful performance of their duties. And a tax law not measuring up to these qualifications is unconstitutional and void. No tax is legal which is not for some necessary or at least useful purpose; no tax is legal where the amount

¹ *Pond v. Negus*, 3 Mass. 230; *Waters v. Daines*, 4 Vt. 601; *Johnson v. Dole*, 3 N. H. 328. See also, *Gates v. Beckwith*, 2 Ohio Dec. 394.

² *George v. School District, &c.*, 6 Metc. (Mass.) 497; *Merritt v. Farris*, 22 Ill. 303; *State v. Bremond*, 38 Tex. 116.

³ *Auditor General v. McArthur*, 87 Mich. 457, 49 N. W. 592.

⁴ *Schofield v. Watkins*, 22 Ill. 66.

⁵ *Edalgo v. So. Ry. Co.*, 129 Ga. 258, 58 S. E. 846.

arbitrarily exceeds the purpose of its creation; no tax is legal which is not equally and impartially laid on the taxpayers; no tax is legal which is not economical, honest, and responsible in its administration; and no tax law is valid in so far as it fails to secure these conditions to the taxpayer in particular and to the public in general.¹

Where the statute authorizes the grant of power of taxation to the county authorities or municipal corporations it may be given to a county board of education if it is a body corporate.² And if the statute authorizes a school tax to be laid by a vote of the majority of the electors of a district it is not unconstitutional as a delegation of the legislative power, even though citizens not residents of the district may thereby be taxed.³

A local tax levied to provide higher grades of studies in the common schools than would be afforded by the common school fund alone, is not for that reason unconstitutional.⁴ And a tax levied under an unconstitutional act and voluntarily paid by the taxpayers, gives a county no vested right in the fund created thereby.⁵

§ 127. Illegal Levy.

Where the school trustees illegally levy a tax, the collection thereof may be enjoined by the taxpayers

¹ *Kerr v. Wooley*, 3 Utah 456, 24 Pac. 831.

² *Smith v. Bohler*, 72 Ga. 546; *Bull v. Read*, 13 Grat. (Va.) 78. But see, *Willis v. Owen*, 43 Tex. 41.

³ *Steward v. Johnson*, 3 Harr. (Del.) 335; *Rose v. Bath*, 10 Ind. 18.

⁴ *Smith v. Simmons*, 33 Ky. L. Rep. 503, 110 S. W. 336.

⁵ *School District, &c., v. Cuming County*, 81 Neb. 606, 116 N. W. 522.

from whom it is sought to be coerced; and the fact that such tax had been paid for two years without complaint does not amount to an estoppel.¹ A tax levied to pay warrants issued in excess of the amount limited by the constitution, is void.² So also is void a tax levied on property outside of the district.³

And if one elected sole prudential committee of a school district who is by law ineligible to that office, as for the reason of being an unnaturalized foreigner, his assessment of a tax voted by the district is void, as such officer cannot be considered even an officer *de facto*.⁴

A levy by a school district for building purposes, before the building has been authorized by a vote of the electors of the district, is illegal.⁵ And an action cannot be maintained against a school district for the assessment and collection of an illegal school tax which was voted beyond the authority of its corporate powers. But whoever presumes to carry into effect such illegal vote does so at his peril unless exempted by statute from personal liability.⁶ Although property or money taken under such illegal assessment may be recovered.⁷

¹ Howard *v.* Trustees, &c., 31 Ky. L. Rep. 399, 102 S. W. 318.

² People *v.* Toledo, &c., 229 Ill. 327, 82 N. E. 420.

³ Eakin *v.* Chapman,—Okla.—, 143 Pac. 21.

⁴ Woodcock *v.* Bolster, 35 Vt. 632.

⁵ St. Louis, &c., *v.* People, 224 Ill. 155, 79 N. E. 664.

⁶ School District *v.* Bailey, 12 Me. 254; Trafton *v.* Alfred, 15 Me. 258; Powers *v.* Sanford, 39 Me. 183.

⁷ Powers *v.* Sanford, *supra cit.*; Starbird *v.* School District, &c., 51 Me. 101; Haines *v.* School District, &c., 41 Me. 246; Joyner *v.* School District, &c., 3 Cush. (Mass.) 567; Ellis *v.* School District,

§ 128. Collection of Taxes.

If the warrant issued to the collector of taxes shall be lost, it may be supplied by a new one, and the right and power of the collector is none the less clear and effective than if the old one were still in existence and produced. Nor is the authority to the person in office at the time of its issue alone, but it protects his successor in office as well. And though no second warrant should issue, yet if the officer can show that one was issued, and establish its loss, he may protect himself by proving its contents.¹ And where a warrant is signed by two trustees of a school district it is *prima facie* valid, inasmuch as the presence of the third trustee at the time of issuing will be presumed.²

When a collector of a school district sues or is sued, and justifies his acts as done in his official capacity, he must show a compliance with all requirements of the law necessary to constitute him a legally qualified officer, — that is an officer *de jure*. Therefore where the statute provides that a collector who is elected by the district to fill a vacancy in that office, shall be sworn before the clerk of the district shall deliver to him the uncollected tax bills of his predecessor, it is incumbent upon him in order to establish, in a suit, his right to receive taxes to show that he has taken the official oath.³

11 Gray (Mass.) 487; Bacon v. School District, 97 Mass. 421; People v. Wright, 34 Mich. 371; Matteson v. Rosendale, 37 Wis. 254.

¹ Higgins v. Reed, 8 Iowa 298.

² Doolittle v. Doolittle, 31 Barb. (N. Y.) 312.

³ Houston v. Russell, 52 Vt. 110.

A collector of school taxes may not pay over the funds in his hands to his successor in office without an order from the proper authority. If he does so the sureties on his bond are liable.¹ And in absence of a vote of the district authorizing expenses for printing, a tax collector has no authority to incur such expenses for the district.² Nor can he recover from the district the expenses of a bond given by him, but not required by law.³

If a collector of taxes knowingly sells more of distrained property than is necessary to satisfy a school district tax and all legal charges, he is liable in tort to the owner of the property thus sold in excess.⁴

Where school district trustees wrongfully collect taxes on property unlawfully taxed, they are under an implied obligation to return it,⁵ and if necessary the district should vote to levy a tax for that purpose.⁶

Mere irregularities in the procedure of levying a tax, by officers authorized to make the levy, is not sufficient grounds for an injunction to issue restraining the collection thereof.⁷ Nor is it necessary to the validity of a vote laying a school tax, that the time of payment be specified, inasmuch as the tax, being legally imposed, is payable on demand or within a reasonable time.⁸

¹ Board, &c., v. Cain, 28 W. Va. 758.

² Wood v. School District, &c., 28 R. I. 299, 67 Atl. 65.

³ *Ibid.*

⁴ Cone v. Forest, 126 Mass. 97.

⁵ Churchill v. Board, &c., 28 Ky. L. Rep. 162, 89 S. W. 122.

⁶ Rand v. Wilder, 11 Cush. (Mass.) 294.

⁷ Gray v. Board, &c., 231 Ill. 63, 83 N. E. 95.

⁸ Bartlett v. Kinsley, 15 Conn. 327.

School orders or warrants are receivable in payment of the school tax of the district in which they are issued, although county orders are not so receivable. But school orders are not receivable for county taxes.¹

§ 129. Exemption from Taxation.

School property in common with other property owned by a municipality for public purposes is not taxable except when the statute so provides.² And although a special assessment is not taxation, statutes exempting public schools from taxation by implication exclude such assessments.³

In determining what school property is exempt from taxation under exempting statutes, use and not ownership governs.⁴ And a lot and building used for school purposes, but incidentally used for other purposes as a lodging and boarding house is not exempt from taxation.⁵

Where the statute provides that all public property shall be exempt from taxation, a public school fund is exempt.⁶

¹ Wallis v. Smith, 29 Ark. 354.

² Dillon on Munic. Corp., 5th ed., § 1396; Board, &c., v. School District, 56 Ark. 354, 19 S. W. 969; Trustees, &c., v. Trenton, 30 N. J. Eq. 667.

³ Dillon on Munic. Corp., 5th ed., § 1446; St. Louis, &c., v. St. Louis, 26 Mo. 468. But see, Hartford v. School District, 45 Conn. 462; Board, &c., v. School District, 56 Ark. 354, 19 S. W. 969; Toledo v. Board of Education, 48 Ohio St. 83, 26 N. E. 403; Pittsburg v. Sterrett, &c., 204 Pa. St. 635, 54 Atl. 463; Witter v. Mission, &c., 121 Cal. 350, 53 Pac. 905; Sutton v. Montpelier, 28 Ind. App. 315, 62 N. E. 710.

⁴ Dillon on Munic. Corp., 5th ed., § 1401; Ft. Smith, &c., v. Howe, 62 Ark. 481, 37 S. W. 717; Chegary v. New York City, 13 N. Y. 220.

⁵ Anniston City Land Co. v. State, 185 Ala. 482, 64 So. 110.

⁶ New Orleans v. Salmen Brick, &c., Co., 135 La. 828, 66 So. 237.

A public schoolhouse to be exempt from taxation must be under the immediate control of the school directors.¹ By "public schoolhouses", in an act exempting from taxation, is meant such schoolhouses as belong to the public and are designed for schools established and conducted under public authority.²

§ 130. Delinquent Taxes. — Execution and Sale.

Collectors of taxes have the powers, and must proceed generally in the same manner to collect, as officers having executions. They are bound to take property in preference to the body if tendered; they are bound to take property if tendered, even after a levy on the person, and this is on the fundamental principle of law that personal liberty should not be unnecessarily restrained.³ But if the debtor, for whose benefit the rule exists, neglects to offer property, or refuses to deliver it when demanded on the declared ground that the proceedings are illegal, he waives the privilege the law has given him and the officer is excusable if he levies on his body.⁴

A collector of school taxes after a demand and refusal to pay a delinquent tax, may under proper authority, levy upon and sell the property of the delinquent taxpayer in satisfaction thereof.⁵ And

¹ *Pace v. Jefferson, &c.*, 20 Ill. 644.

² *Gerke v. Purcell*, 25 Ohio St. 229; *Willard v. Pike*, 59 Vt. 202, 9 Atl. 907; *St. Joseph's Church v. Assessors, &c.*, 12 R. I. 19.

³ *Voorhees on Arrest*, 2d ed., § 6.

⁴ *Allen v. Gleason*, 4 Day (Conn.) 376. See also, *Fulton v. Jenks*, 9 Pa. Co. Ct. 126.

⁵ *Gearhart v. Dixon*, 1 Pa. St. 224.

where the statute makes it the duty of the district collector to collect the tax and pay it over to the treasurer or his successor in office, payment to any other person is invalid. To the collector is delivered the tax bill and warrant for the purpose of collection. He gives bonds for the proper performance of that duty, if a bond is required, and must collect and pay the tax to the treasurer as specified. Failing to do this he may be sued or prosecuted for his default. Therefore he may levy and sell property of the delinquent although the tax has been previously paid to the treasurer of the district.¹

The validity of a school tax is not so affected by failure of the officers who called the meeting to take the oath prescribed by statute, as to render invalid a sale for the non-payment of such taxes.²

A collector of school taxes by a levy according to law, upon property for the payment of a tax, acquires a special property therein, upon which he may maintain an action against one removing it, even though the collector may have left the property with the owner under an agreement.³ And if he sell property taken upon execution in any manner other than that authorized by statute, he becomes a trespasser, and the sale is void.⁴

¹ *Young v. King*, 3 R. I. 196.

² *Brasch v. Western, &c.*, 80 Ark. 425, 97 S. W. 445.

³ *Hilliard v. Austin*, 17 Barb. (N. Y.) 141.

⁴ *Bedell v. Barnes*, 17 Hun (N. Y.) 353.

CHAPTER XI

SYNOPSIS OF PRINCIPAL STATUTES

§ 131. General Statement.

To be better enabled to understand the law of public schools as laid down in the judicial decisions of the several States it is well to have a general view of at least the more important statutes of the jurisdiction whose decisions are to be considered. Herein is shown brief synopses of the statutes of the several jurisdictions, covering the more important points of statutory law pertaining to public schools, compiled from the statutes of each State. Statutes designed to promote education are to receive a liberal construction.¹

The terminology used in the designation of school districts is not entirely uniform. The term "joint school districts" usually refers to those districts formed from territory lying in two or more counties.² Districts formed from two or more townships may be termed "fractional districts."³ The larger cities or towns usually constitute "separate" or "independent"⁴ districts into which two or more districts are

¹ *Yale v. School District*, 59 Conn. 492, 22 Atl. 295.

² As in Idaho, Kansas, Minnesota, Nevada, and Oklahoma.

³ As in Michigan.

⁴ As in North Dakota, South Dakota, and Texas.

sometimes consolidated, and may be governed by city charters and boards of education.¹ Districts are usually "consolidated" for economic reasons, thereby securing higher grade of instruction, or dispensing with teachers for very few pupils.

As used herein, "*School Term*" means the entire scholastic year, and "*Separate Schools*", unless otherwise specified means separate for white and colored pupils.

§ 132. Alabama.

Board of Education of five members controls in some cities, and in municipalities where there is none the mayor and board of aldermen perform the duties of trustees. Women are eligible to serve on such boards.

Compulsory Attendance of a mild type will be required after October 1, 1917, of children between eight and fifteen, at least eighty days during each scholastic year; but boards of education may reduce the period to not less than sixty days for any individual school. Exceptions are made of those who have completed seven grades, and of those who live two and one-half miles or more from school, where transportation is not provided. It is further provided that a teacher, with approval of the attendance officer may excuse in extreme cases of emergency or domestic necessity. Exceptions are also made of those mentally or physically incapacitated, or in extreme poverty. Attendance may be at a private or parochial school.

¹ As in California.

County Boards of Education consist of County Superintendent and four county trustees elected by the several chairmen of district trustees. Select treasurer of school funds and perform other duties. Women are eligible to serve on the board.

County Superintendent is elected in each county. Must take oath and give bond. Is chief executive officer of County Board of Education.

Districts as formerly established on township lines are abolished and district lines may be changed, or new district created by vote of the County Board of Education. Incorporated cities and towns are separate school districts. A district may lie in two or more counties.

District Trustees, three in number, are elected in each district. They enumerate children, care for school property, nominate teachers to the County Board of Education who make the contract, visit schools and make quarterly reports to County Superintendent.

Employment Certificates may be issued to children under sixteen, but such children shall attend school for at least eight weeks in each year.

School Age is between seven and twenty-one.

Separate Schools are provided, and it is unlawful to unite in one school white and colored children.

State Board of Examiners composed of State Superintendent and two others, prepare questions for county examinations of teachers.

State Superintendent of Education exercises general supervision over educational interests of the State. Reports to Governor.

Teachers must hold certificates. Render monthly reports pending which compensation is withheld. Must be at least seventeen.

Text-Book Commission consists of Governor, State Superintendent, and nine others, one from each congressional district. They select and adopt a uniform series of text-books for a period of five years. Partisan or sectarian books prohibited. By a three-fourths vote a book may be dropped at end of any school year during the continuance of the contract, and another adopted. Contracting publisher shall give bond which shall not be exhausted by a single recovery.

§ 133. Arizona.

Compulsory Attendance is required between eight and sixteen, except when employed between fourteen and sixteen on a permit issued by school trustees, or excused by trustees as receiving competent instruction at home, or at private or parochial school, or for mental or physical incapacity, or having completed grammar school course, or for other satisfactory reasons.

Corporal Punishment is permitted.

County Superintendent apportions money to districts; presides over teachers' institutes; conducts examinations of teachers; appoints trustees of school districts in case of vacancy.

Districts shall be named by number and county, in which name the trustees may sue and be sued, and hold and convey property for the district.

Electors may be either sex of certain qualifications who are parents or guardians of minor children, or who

have paid a State or county tax other than poll, road or school tax during the preceding year; and women whose husbands have paid such tax may vote.

Employment Certificates may be issued to those between fourteen and sixteen.

School Term is six months.

School Age is between six and twenty-one.

School Trustees, three in number, prescribe and enforce rules, manage and control school property, purchase furniture and equipment, expel pupils for cause, exclude from primary grades those under six, and exclude sectarian books.

Separate Schools are provided by district trustees, in which pupils of the African race are segregated from those of the white race.

State Board of Education consists of Governor, State Superintendent of Public Instruction, president of University, principals of normal schools *ex officio*, a city Superintendent of Schools, a principal of a high school, and a County Superintendent, to be appointed by the Governor. State Superintendent acts as secretary.

State Board of Examiners consists of Superintendent of Public Instruction and two persons appointed by him. Adopt rules and regulations to govern examination of teachers for certificates, prepare questions and forward them to county superintendents.

State Superintendent of Public Instruction superintends the public schools at an annual salary of three thousand dollars, and actual expenses not to exceed one thousand dollars annually.

Teachers must hold certificates and present them to the County Superintendent before assuming charge of a school. They are of five classes: second grade, primary, first grade, life, and special. Must attend teachers' institute called by County Superintendent not more than once each year. Suspend pupils for cause. Keep register. When dismissed may appeal to County Superintendent. Pension of six hundred dollars annually is paid after twenty-five years service.

Text-Books shall be uniform and not changed during five years from adoption, and not more than one in any grade in one year. Certain books are loaned free to pupils or they may purchase them at cost. Publishers furnishing books on contract shall give bond.

Transportation may be furnished by vote of district, to children living a greater distance than one mile from school.

§ 134. Arkansas.

Compulsory Attendance is required between eight and sixteen at some day school, public, private, parochial or parish, at least one-half of the entire time the public school is in session. Regular daily instruction at home may be substituted. Children between sixteen and twenty likewise must attend unless regularly and lawfully employed. Excused for extreme destitution, mental or physical incapacity, living two and one-half miles from school, or when labor is necessary to support of family, or when having finished seven grades.

County Examiners grant licenses to teachers upon examination.

County Superintendent may be elected in any county, and where so elected shall as County Examiner hold quarterly examinations of applicants for teachers' licenses, using questions furnished by State Superintendent. Must hold a five-days' institute.

Districts may be consolidated and may exist in two or more counties. They are bodies corporate.

School Age is between six and twenty-one. Older persons may be permitted to attend.

School Directors, three in number for each district, are elected. Consolidated districts have six. They make provisions for separate schools for white and colored children; promote interests of education; care for school property; hire teachers who are licensed, making the contract in duplicate. May suspend pupils, but not beyond current term.

State Board of Education composed of State Superintendent and one member from each congressional district appointed by Governor. Have management of school funds. Grant charters to institutions of learning, have supervision of the public schools.

State Superintendent under supervision of State Board may issue teachers' licenses based upon teachers' certificates of other States.

Teachers must have license when school begins, granted by State Superintendent or County Examiner, and are required to render monthly reports to County Superintendent, pending which the last month's salary is retained. Are required to attend institutes. Must

not be related to school directors, unless petitioned by two-thirds of patrons of school. Directors may be enjoined from entering into such contract with third cousin of a director.¹ Shall not permit use of sectarian books.

Text-Books for destitute children may be paid for out of school funds. Uniformity in counties may be voted by electors of districts. As adopted by school directors cannot be changed in three years unless upon petition of electors.

Truancy is guarded against by attendance officers who have power to arrest truants without warrant and place them in school.

§ 135. California.

Boards of Education are elected in cities. Powers and duties are same as school trustees, (*q.v.*).

City Boards of Examination consisting of city, or city and county, Superintendent and four other members. Examine applicants for elementary school certificates good in city or county.

Compulsory Attendance between eight and fifteen. Excused for mental or physical incapacity, or where receiving competent instruction at home or elsewhere, or between fourteen and fifteen if holding employment certificate, or where no public school is located within two miles, or having completed required course.

County Board of Education consisting of County Superintendent and four other members appointed by

¹ See *Holt v. Watson*, 71 Ark. 90, 71 S. W. 262.

county supervisors. Examine applicants for teachers' certificates ; issue diplomas to graduates ; adopt books and apparatus.

County Superintendent superintends schools of the county. Apportions school money to each district. For failing to visit a school at least once each year ten dollars is deducted from his salary. Presides over teachers' institute held in his county. Issues temporary teachers' certificates. Must keep record of his acts. Approves or rejects plans of schoolhouses except in cities having a Board of Education.

Districts must be designated by names without use of numbers, and in that name trustees may sue and be sued. All school districts are declared incorporated. May be governed by city charter and Board of Education.

Employment Certificates may be issued to a child of fourteen who has completed grammar school course, or where family needs the earnings. Between twelve and fourteen may work on vacation certificate.

Evening Schools shall be open to all over fourteen and to adults, also to children under fourteen holding employment certificate.

Hazing is a misdemeanor.

Parental Schools may be established for children between eight and fifteen who are habitual truants, or are insubordinate and disorderly, or irregular in attendance.

School Age is six to twenty-one, and adults are admitted on vote of board. Admitted in kindergartens at four, and in deaf school at three years.

School Term is six months.

School Trustees consisting of three members are elected by ballot in each common school district, but are appointed by County Superintendent in case of vacancy. No person is ineligible on account of sex. Powers and duties mainly are : To prescribe and enforce rules ; manage and control school property ; pay all moneys collected into the county treasury ; purchase school furniture, including organs and pianos ; grant use of school buildings for public, literary, scientific, recreational or educational meetings, or for discussion of matters of general interest, provided such use does not interfere with school use, and no grant is for longer term than one year, and then revocable by grantors ; upon vote of district, build schoolhouses ; purchase or sell school lots ; employ principal for each school ; employ teachers, janitors and other employees ; suspend or expel pupils ; exclude sectarian publications. The district attorney is legal adviser to school officers.

Secret Societies are prohibited, with certain exceptions.

Separate Schools may be established for Indian children and those of Chinese or Mongolian descent, and when established such children must not be admitted into any other school.

State Board of Education of seven members appointed by Governor. State Superintendent of Public Instruction is secretary and executive officer of the board. The Board determines all questions of policy, which are to be executed by the Superintendent. Principal powers and duties are : To adopt rules and regulations to

govern itself, subordinates and schools; appoint three assistant superintendents of public instruction to be known as (1) commissioner of elementary schools, (2) commissioner of secondary schools, (3) commissioner of industrial and vocational education; grant life diplomas to certain qualified teachers, and revoke them for cause; compile and manufacture text-books, or contract for them, and enforce uniform use of them.

State Superintendent of Public Instruction superintends the schools of the State. Reports to Governor. Apportions school fund. Visits schools with traveling expenses not to exceed eighteen hundred dollars annually. Has power to annually call a convention of city and county Superintendents.

Teachers are benefited by a retirement fund open to teachers who have served thirty years, fifteen of which in this State, ten of which immediately precede retirement. Amount of retirement salary is five hundred dollars annually. Must hold certificates. May suspend pupils. Must keep a school register. Must be at least eighteen years of age.

Text-Books of uniformity for elementary schools are made by the State,¹ at the State printing office, and furnished free of charge to the pupils. This is a constitutional provision.

Transportation may be provided.

Truancy is guarded against by attendance officer who may be appointed by local board, with assistants. They, or any peace officer, or school officer, may arrest

¹ See also Kansas.

during school hours, without warrant, any child between eight and fifteen, found away from home and reported by a school authority as a truant, and deliver such child to his parent, guardian or teacher.

Vaccination certificates must be filed with person in charge of school, except that parent or guardian opposed may file a statement in place of certificate. When smallpox is present all unvaccinated children shall be excluded.

§ 136. Colorado.

Compulsory Attendance of children in all school districts between eight and sixteen at a public, private or parochial school for entire public school yearly session. Exceptions are those over fourteen who have completed eighth grade, or whose help is necessary to support of itself or parent, or for good cause shown. Sufficient instruction at home may be substitute.

County Superintendents are elected in each county for two years. Have supervision over schools in county. Examine accounts of district officers. Report to State Superintendent. Administer oaths to school officials. Fill vacancies in boards of school directors. Appeal lies from their decisions to State Board of Education.

Hazing is prohibited as misdemeanor punishable by fine.

Pupils residing remotely from a school may attend nearer in another district if sufficient room.

School Age is between six and twenty-one. Adults may be admitted.

School Directors five in number in larger districts, and three in smaller districts are elected. They employ and discharge teachers, mechanics and laborers; fix course of study, exercises and kind of text-books to be used; enforce rules and regulations of State Superintendent; supply school furniture; suspend and expel pupils for cause; furnish free books to indigent children. Appeal lies from their decision to County Superintendent.

School Districts are bodies corporate. May exercise eminent domain.

School Term not less than six months, except that for climatic reasons in altitude of eight thousand or more feet the term may be not less than four months.

Secret Societies except such as are sanctioned by school directors are prohibited, and pupils may be suspended, dismissed, or restricted for violation.

State Board of Education composed of the Superintendent of Public Instruction as president, Secretary of State, and Attorney General, who grant State diplomas to teachers who have taught two years, thus superseding the necessity of examinations. They shall not prescribe text-books.¹

State Board of Examiners composed of State Superintendent as president, and eight others appointed by State Board of Education, examine applicants for State diplomas, and issue without examination to graduates of certain State colleges, and to those who have taught for certain periods.

¹ Const. Art. 9. sec. 16.

State Superintendent is elected at State election for two years. Decides all points of construction of school law, subject to appeal to courts. Prepares questions for County Superintendents. Has general supervision of County Superintendents and all public schools.

Teachers' minimum salary is fifty dollars a month. Must have license before commencing to teach. Keep daily registers, and last month's salary is withheld pending filing thereof with secretary of district at close of term.

Transportation is furnished to pupils living one mile or more from consolidated schools.

Truant Officers may be appointed in certain districts. They notify parent or guardian of truancy, and the parent or guardian is proceeded against for allowing the truancy if continued.

Text-Books shall be uniform in each district, and not changed in four years unless price is advanced, quality lowered, or supply stopped. Free to pupils when so voted by district.

§ 137. Connecticut.

Compulsory Attendance from seven to sixteen unless child is elsewhere receiving regularly, thorough instruction during school hours and terms in the same studies in private school where a register is kept. May be subject to transportation being furnished in extreme cases.

Districts are corporations. No State aid unless schoolhouse is provided. By two-thirds vote of those

present at legal district meeting may allow school-house to be used for other purposes when not in use for school purposes.

Electors include registered women who are entitled to vote at election of school officers, or upon any matter relating to education, to schools, or to public libraries.

Employment of Children over fourteen and under sixteen permitted on certificate.

Evening Schools must be maintained in towns or districts of ten thousand or more inhabitants. Open to those over fourteen. Smaller towns may maintain evening schools.

School Age is compulsory from seven to sixteen, without discrimination on account of race or color, but between fourteen and sixteen may be lawfully employed at home or elsewhere if schooling is sufficient. Children from five to seven are permitted to attend, and over four on vote of committee may attend. Towns or districts may establish kindergartens open to children over three.

School Committee of the town, or school visitors, prescribe rules, also text-books (subject to control of State Board of Education), and approve plans for school-houses.

School Officers are not disqualified by reason of sex.

School Terms are for at least thirty-six weeks.

State Board of Education of seven members, of which three are a quorum, has general supervision and control. May direct books to be used, not to be changed within five years. Shall prescribe forms of registers. Shall

hold meetings of teachers and school officers for purposes of instruction with expenses not to exceed four thousand dollars annually. Shall report annually to the Governor.

Teachers are employed by school visitors, or school committees under direction of towns, and by boards of education. Certificate is necessary.

Text-Books and other supplies may be provided by towns and loaned to pupils free of charge, and electors shall upon petition of twenty legal voters decide whether free text-books shall be supplied. Indigent pupils are to be supplied free.

Town Management school committee has powers of district committees and board of school visitors. Shall maintain good common schools of the different grades. Shall appoint chairman and secretary. Shall appoint one or more school visitors or a Superintendent to exercise supervision. Shall have care and management of property. Shall determine number and qualifications of pupils to be admitted. Shall employ teachers for no longer period than one year. Shall designate schools to be attended, and provide for all qualified children of school age. May provide for transportation; and arrange with committee of adjoining towns for instruction therein when more convenient. Shall report in detail to annual town meeting.

Trade Schools may be established for instruction in distinct trades, useful occupations, and avocations.

Truancy is governed by local regulations, and where so governed each town or city must appoint three or more attendance officers. Male truants may be ar-

rested. Female truants may be arrested on warrants issued upon request of parent or guardian.

Vacation Certificates shall be granted to physically fit children between fourteen and sixteen, permitting employment during vacation.

Vaccination may be required before a child is permitted to attend school.

Vocational Guidance is subject to local control, and a local vocational counsellor may be employed.

§ 138. Delaware.

Compulsory Attendance is required of children between seven and fourteen at least five months annually, unless reduced to three months by vote of district. If nearest school is two miles distant the law does not operate unless a conveyance is provided. Private school, tutor, or other instruction may be substituted upon approval by County Superintendent. Attendance may be excused by school committee and County Superintendent for urgent reasons.

Commissioner of Education appointed by Governor at annual salary of two thousand dollars. His duties are prescribed by the State Board of Education.

County School Commission in each county, consisting of three members appointed by Governor, exercises local supervision, investigates and reports to State Board. Hears complaints subject to appeal to State Board.

County Superintendent has general superintendence of all schools in his county. Conducts examinations of teachers and issues certificates. Holds teachers'

institute once a year, of three days' session, for which is annually appropriated one hundred and fifty dollars.

Districts are numbered in continuation of the school districts of the same county. May borrow money.

Electors are every male having right to vote for State representative and who has paid his school tax for the preceding year; and every female above twenty-one, having paid such tax. White or colored voters may not vote in meetings called for other race.

School Age is six or over, and over four in kindergartens.

School Term at least one hundred and forty days.

School Committee of clerk and two commissioners provide schoolhouses and care for them; employ teachers and dismiss them for cause; have general supervision of schools. Boards of education control in cities.

Separate Schools are provided for white and colored children.

State Board of Education of seven members, having general supervision and control of both white and colored schools. They hear and determine all appeals from other officials. Commissioner of Education is secretary. Make rules and enforce them.

Teachers must have certificates, to be awarded after passing an examination, except normal or college graduates in discretion of County Superintendent once only, may be granted without examination. Must render quarterly reports before receiving salary. Must render annual report to State Board. Must attend teachers' institute.

Text-Books are loaned to pupils free of charge. Those who desire may purchase books at cost.

Truancy is guarded against by attendance officers who may be employed in each district, and may arrest without warrant and place in school those who fail to attend school as required.

Vaccination may be provided free of charge.

§ 139. Florida.

Compulsory Attendance is optional with district or county on three-fifths vote; such attendance if adopted to apply to children between eight and fourteen for at least eighty days in each year. Attendance at private or church school keeping record and making report may be substituted. Exemptions are for mental or physical infirmities; residence two miles from school, where transportation is not provided; extreme poverty; necessary temporary absence.

County Board of Public Instruction of three members, no two of whom reside in same district. Are corporations. Hold lands for school purposes. Locate and maintain schools. Select sites. Build and repair schoolhouses. Employ teachers. Report to State Superintendent. Prescribe studies. May not contract with members except for school sites.

County Superintendent acts as secretary of County Board. Visits schools. Selects supervisors. Decides questions subject to appeal to County Board. Examines teachers and issues certificates.

School Age is between six and twenty-one.

School District may be a city, town, or division of a county.

School Term is determined by the County Board, but must be not less than four months in each year.

School Trustees of special-tax districts are body corporate. May hold property, sue and be sued.

Separate Schools are required by the constitution.

State Board of Education required by constitution consists of Governor, Secretary of State, Attorney General, State Treasurer, and State Superintendent of Public Instruction. Is a body corporate. Direct and manage funds; hold school lands; decide appeals from State Superintendent; remove subordinate officials; have general supervision of school matters.

State Superintendent of Public Instruction with term of four years is required by the constitution.

Teachers must hold certificates, which are of seven grades: third grade, second grade, first grade, primary, special, State and life certificates. Have supervision over pupils and schoolhouses, suspend pupils for not more than ten days. Render monthly reports. Misdemeanor to teach in school of other race.

Text-Books are to be uniform as adopted by the State Text-Book Commission who advertise for bids and make contracts with publishers to run for five years. Publishers are to furnish bonds. Books are free to poor children.

Truancy may be guarded against by attendance officers, who serve notice of the non-attendance upon the parent or guardian, who is to be prosecuted if delinquency is continued.

§ 140. Georgia.

Bible cannot be excluded from public schools.

County Board of Education is composed of five freeholders selected by the grand jury of each county. County School Commissioner is *ex officio* secretary. Contract with teachers. May appoint three trustees for a sub-school district if advisable. Appeal lies to State Superintendent. May borrow money for teachers' salaries.

County Superintendent elected by county voters, together with County Board of Education makes rules to govern schools. Acts as secretary of board. Superintends examinations of teachers, and suspends them for cause, subject to appeal to County Board, thence to State Superintendent, thence to State Board. Is agent of the County Board.

Employment Certificates are issued to children over twelve and under fourteen and one-half years.

School Age is between six and eighteen.

School Districts are each county, and are managed by the County Board of Education who may lay off sub-school districts in each of which they shall establish one white and one colored school where population is sufficient.

School Term at least five months, is regulated by County Boards of Education.

School Trustees three in number may be appointed in a sub-school district by the County Board of Education. They recommend teachers to County Board. Supervise schools, and school property.

Separate Schools are to be provided.

State Board of Education composed of six members, the Governor, State Superintendent of Schools, and four others appointed by Governor subject to confirmation by Senate. Provide rules and regulations for supervision of all schools. Select list of text-books, which can be changed only every five years, unless peculiar conditions demand change. Final decision on appeal from State Superintendent. Provide for examination of teachers. Act as State School-Book Commission.

State Superintendent of Schools elected by people. General superintendence of the business relating to common schools. Reports annually to legislature. Acts as secretary and executive agent of State Board of Education. Appoints three State School Supervisors.

Text-Books must be uniform. School-Book Commission advertises for bids, and contracting publisher gives bond.

Teachers must be licensed. Report at end of term. Attend County Institute. Contract is an entire contract.

Transportation may be provided for pupils living three miles or more from schoolhouse.

Vaccination is regulated by County Boards of Education, and in larger cities by Boards of Public Education. They may require all pupils to be vaccinated as a prerequisite to admission.

§ 141. Idaho.

Compulsory Education required between eight and eighteen in a public, private or parochial school, unless

child is over fourteen and has completed eighth grade, or where its help is necessary to support of itself or parent, or is excused for good cause shown to superintendent of district or county, from whose decision final appeal lies to local probate court.

County Superintendent is elected by people. Supervises public schools of county except certain larger ones. Holds teachers' examinations. Appoints trustees in new districts, and fills vacancies in older ones. Holds teachers' institutes.

District Trustees consisting of three members are elected by ballot in each district. They employ teachers on written contract and discharge them for cause with hearing. Have charge of school property. Provide furniture and janitor service. Must not vote for relative of his own or immediate family as teacher. May employ attorney. Independent districts have six trustees.

School Age is between six and twenty-one. In kindergartens between three and six.

School Districts are bodies corporate, and although not municipal corporations may contract same as municipal corporations. They are created or changed on petition. Within any county may be consolidated and are then termed "independent school districts." If consolidated from two or more counties are termed "joint school districts."

School Term is not less than seven months in districts having not more than seventy-five pupils, nor less than nine months in those having more than that number.

State Board of Education consists of five members,

appointed by Governor, and State Superintendent *ex officio*. They appoint Commissioner of Education. Is final court of appeal in all educational controversies. Exercises general supervision over public schools. Prescribes minimum course of studies. Has supervision of text-books. Controls certification of teachers.

State Superintendent of Public Instruction is elected by people. Confers with subordinate officials on school matters. Is executive officer of State Board.

Teachers must be employed on written contract, and exhibit certificate to trustees before signing contract. Must keep register and report. May suspend pupils and report to trustees, thence appeal lies to County Superintendent. Must attend institute.

Transportation may be provided in consolidated districts.

§ 142. Illinois.

Boards of Education control in districts of not fewer than one thousand inhabitants and not more than one hundred thousand, not governed by special acts. Have powers of school directors, with other special powers. Membership varies from seven to fifteen. In cities of more than one hundred thousand consists of twenty-one members.

Compulsory Attendance is required between seven and sixteen in some public or private school for at least six months, unless instructed elsewhere, or mentally or physically incapacitated, or between fourteen and sixteen excused when necessarily and lawfully employed during school hours.

County Superintendents are elected by people. Grant certificates. Generally superintend. Conduct teachers' institutes. Hold examinations.

Electors may be women, who are eligible to school office.

Employment Certificates are granted to certain children between fourteen and sixteen.

Parental Schools for truants are established in cities of one hundred thousand or more, and may be established in cities between twenty-five thousand and one hundred thousand.

School Age is between six and twenty-one. In kindergartens from four to six. Exclusion of colored children, or keeping them from a public school by intimidation for reason of color, is a crime.

School Directors three in number are elected in school districts of less than one thousand population, and not governed by any special acts. Have general supervision of schools. Appoint teachers and fix salaries. Enforce uniformity of text-books, not to be changed oftener than once in four years. Suspend and expel pupils. Grant temporary use of schoolhouses, when not occupied for school, for religious meetings, Sunday schools, evening schools and literary societies, and for other proper meetings. Establish schools for the deaf between three and twenty-one.

School Districts are each congressional township and are bodies corporate.

School Term is not less than six nor more than nine months.

School Trustees three in number are elected by the people in each district. May receive gifts for school

purposes; sell abandoned schoolhouses; change boundaries; form new districts.

Superintendent of Public Instruction elected by people supervises all public schools. Is legal adviser of school officers. Hears appeals from County Superintendents. Grants and suspends teachers' certificates.

Teachers must have certificates and be at least eighteen years of age. Pension funds are established. Keep registers, and report.

Text-Books are loaned free to indigent children. Must be uniform and not changed oftener than once in four years.

Truant Officers may arrest any truant child of school age, not lawfully employed, and place with teacher.

§ 143. Indiana.

Bible shall not be excluded from the public schools.

Compulsory Attendance is required between seven and fourteen in a public, private, or parochial school; or between eight and sixteen if blind or deaf.

County Board of Education consists of County Superintendent, the trustees of the township, and chairman of the school trustees of each town and city. They consider the general wants and needs of schools and property.

County Superintendent takes oath and furnishes bond. Has general superintendence of the schools in his county. Visits schools. Conducts teachers' institutes. Gives decisions in controversies. Examines teachers. Appeal except on certain local matters lies to State Superintendent.

Night Schools may be established in cities of three thousand or more, open to all persons between fourteen and thirty who are employed during the day.

Secret Societies are unlawful in any elementary or high school under penalty of suspension or expulsion.

School Commissioners of five members have control of schools in cities of one hundred thousand or more inhabitants. Women are eligible to serve on such boards.

School Districts are each civil township, and each incorporated town or city. Are bodies corporate.

School Term is at least six months.

School Trustees may be of either sex, over twenty-one, either married or single. Board consists of three members. In larger cities they are elected by the common council. Have general charge of educational affairs; employ teachers; establish and locate schools.

Separate Schools for colored pupils may be provided; but unless provided shall be admitted to schools with white children.

State Board of Education shall consist of Superintendent of Public Instruction, presidents of Purdue University, State University, and State Normal School, Superintendents of Schools of three largest cities, and six others. Grant State certificates to teachers. Are text-book commission. Advertise for bids, books to be supplied for five years. Township trustees furnish books free to indigent children. Books shall be uniformly used.

State Superintendent is elected by the people. Shall visit each county at least once and examine auditor's books and records, meet with officers and teachers.

Teachers must be licensed by State Board of Education, State Superintendent, or County Superintendents. Trustees shall not employ any teacher whom a majority of the electors at a school meeting decide they do not wish employed. All contracts with teachers shall be in writing. Must render reports. Pension funds are established in cities over one hundred thousand. Institutes are held once each month, which must be attended.

Text-Books are selected by State Board of Education who are also a text-book commission. Bids shall be advertised for. All books shall be uniform.

Transportation shall be provided, in case of discontinued schools, for all pupils between six and twelve who live between one and two miles from the school to which they are transferred, and for all pupils living more than two miles from such school.

Truancy is controlled by County Boards of Education as truancy boards, who appoint one truant officer who reports truancy to the parent or guardian, and if the truancy continued proceeds against them. Cities or towns of five thousand or more enumerated school children may be considered by the county board of truancy as a separate district for the application of the truancy act. Cities of ten to twenty thousand children shall have two truant officers and larger cities have more such officers.

§ 144. Iowa.

Bible shall not be excluded from the public schools, nor shall any child be required to read it contrary to wishes of parent or guardian.

Board of Educational Examiners consisting of the Superintendent of Public Instruction, president of the University, principal of the Normal School, and two persons, one a woman, to be appointed by the Governor. Conduct examinations of teachers. Issue State certificates and diplomas.

Compulsory Attendance is required between seven and sixteen if in proper mental and physical condition, at some public, private or parochial school, or elsewhere under a competent teacher, unless such child lives more than two miles from any school and transportation is not provided, or if regularly employed if over fourteen, or has education equal to eighth grade, or who is excused by order of court, or while receiving religious instruction.

County Superintendent may be of either sex. Visits schools. County Attorney is his official adviser. Examines applicants for teachers' certificates. Sees that law is enforced. Appeal lies to him from school directors in many matters, and from his decision to State Superintendent, but he may not render judgment for money.

County Board of Education consists of County Superintendent, County Auditor, and Board of Supervisors. Provide for submitting to electors question of uniformity of books. Select text-books when uniformity law is adopted. County Attorney is their legal adviser.

Electors may be male or female.

Secret Societies are prohibited except such as are sanctioned by the directors of the schools. Penalty

is suspension, dismissal, or curtailment of privileges in school honors.

School Age is between five and twenty-one. Over twenty-one may be admitted upon contract for tuition.

School Directors for each township composed of one director from each sub-district, but if township is not divided into sub-districts the number elected shall be three. In independent districts the board consists of five. Have management and exclusive control of school affairs. Women are eligible. Contract in writing with teachers.

School Districts are corporations, and as nearly as possible the boundaries of civil and school townships shall coincide. Sub-districts are not corporations. When a new civil township is formed it shall also constitute a school township. Townships may be divided into sub-districts.

Superintendent of Public Instruction is appointed by Governor, with consent of Senate, to serve four years. Has general supervision and control of public schools not under control of State Board of Education. Inspects and recommends. Examines and determines appeals. Appoints county institutes. Prepares and supplies questions for examinations of applicants for teachers' certificates and pupils completing eighth grade of rural schools.

Teachers must hold certificates. Keep registers, and report. May temporarily dismiss pupils.

Text-Books are free to indigent pupils, and to the pupils of any district so voting. Adopted by directors of each school corporation to be sold to pupils at cost,

no contract necessary for any particular period. Bids must be advertised for, and contracting publisher must give bond. Uniformity law does not apply to cities or towns.

Transportation may be provided in certain cases, especially in consolidated districts.

Truant Officers are appointed in school corporations of over twenty thousand population. Arrest truant children without a warrant and place them in school. In smaller towns the marshal or other police officer may be employed as a truant officer.

§ 145. Kansas.

Board of County Examiners composed of County Superintendent and two others, in each county, examine persons proposing to teach.

Board of Education of six members are elected in larger cities. They shall elect a Superintendent of Schools who shall have charge and control of the schools of the city. They may open school buildings for use of night schools, and various educational societies. They are bodies corporate and may exercise eminent domain.

Compulsory Attendance is required between eight and fifteen years, in a public, private, denominational, or parochial school, provided that employed children of fourteen may attend but eight weeks in one year. Temporary absence between eight and fourteen may be excused in cases of emergency or domestic necessity.

County Superintendent is elected. Takes oath and gives bond. Visits schools. Fills vacancies in school district board.

Electors are male or female residents of the district for thirty days, who are not disqualified.

School Age is between five and twenty-one. In kindergartens between four and six.

School Districts are parts of a county. A "depopulated school district" means one having fewer than five legal voters, and fewer than seven persons between the ages of five and twenty-one; if less than twelve but more than seven children of such age, the district is termed "partially depopulated." All districts are bodies corporate. "Joint districts" are those consolidated from districts lying in two or more counties.

School District Officers are a director, clerk, and treasurer who constitute the district board. They are a board of directors only when sitting as such. Have care of district property. May open schoolhouse for use of religious, political, literary, scientific, mechanical, or agricultural societies, or societies for suppression of crime. Hire teachers. Supervise schools. Furnish registers and see that they are properly kept.

School Term not less than three nor more than ten months.

Secret Societies as a high school organization are prohibited under penalty of expulsion.

Separate Schools may be maintained, but no discrimination on account of color may be made in high schools except in Kansas City.

State Board of Education consists of State Superintendent, chancellor of State University, president of State Agricultural College, president of State Normal

School, and three others appointed by the Governor. Prescribes studies. Issues teachers' certificates.

State School Book Commission of seven members shall print, publish or provide for the publication of a complete series of school text-books for use in the public schools.

State Superintendent supervises and manages educational interests of the State. Appoints an assistant State Superintendent. Renders opinions to County Superintendents upon written statements of fact.

Teachers must have certificates which, when issued by State Board of Education, are good throughout the State. Salary may not be paid unless certificate is registered. Are required monthly to report truants before receiving salary. Retirement fund in larger cities for those of thirty years' service. Contract must be in writing.

Text-Books as far as possible are to be published by the State. Free to pupils upon vote of district. Books not published by the State are to be contracted for on bids, such books not to be changed in five years.

Transportation of pupils living two or more miles from school in consolidated districts shall be provided in a safe and enclosed conveyance. May be provided for pupils in any district, living two and one-half or more miles from school, in properly heated conveyance.

Truant Officers are nominated by the County Superintendents, and appointed by the board of county commissioners. Each county constitutes one or more truant districts. In larger cities they are appointed by the local board of education. They give written notice

of truancy to the parent or guardian and if truancy does not cease the parent, guardian or other person having control of the child is proceeded against under charge of misdemeanor. County Attorneys in country districts, and City Attorneys in city districts shall prosecute such actions.

Tuition Fees may be assessed when in any district the public money is not sufficient to keep the schools open during the term voted at the district meeting.

§ 146. Kentucky.

County Board of Education consists of chairmen of each division together with County Superintendent. Advertise for text-book bids and award contracts.

County Superintendent elected by people, together with two others examine teachers. Must attend institute. Decides school matters subject to appeal to State Superintendent.

Compulsory Attendance is required between seven and twelve in some public, private or parochial school. Home tuition subject to examination may be a substitute. Excused for mental or physical infirmity.

Educational Commission of eleven members have general duty of recommending improvements in the school system.

Electors may be women.

School Age is between six and twenty.

School Districts are counties, or such part of a county not controlled by a city school. Are sub-divided into educational divisions, each of which is again divided into sub-districts.

Schoolhouses may be used for public gatherings when the schools are not in session.

School Term is at least six months.

School Trustees are elected, one from each sub-district, and all trustees elected within each educational division constitute a division board. Each trustee recommends needs of sub-district to division board. The board is a body corporate. Have power to suspend pupils upon written complaint from teacher.

Separate Schools are established and required by constitution.

State Board of Education consists of the Superintendent of Public Instruction, Secretary of State, and Attorney General. Is body corporate. Makes rules and regulations for schools. Decides appeals from State Superintendent.

State Board of Examiners consists of Superintendent of Public Instruction and two others. Examine applicants for educational positions.

Superintendent of Public Instruction is elected by the people. Decides appeals from County Superintendents. Acts on State Board of Examiners.

Teachers contract in writing and in duplicate with division board. Must have certificate. Keep records and report. Have power to suspend pupils, reporting in writing to chairman of board of trustees. Must attend institute.

Text-Books are free to indigent children. Text-book commissions advertise for bids, and contracting publisher shall furnish bond. Uniform series is adopted.

§ 147. Louisiana.

Compulsory Attendance in the parish of Orleans of children between eight and fourteen in a public, private, denominational or parochial day school. Excused by attendance officer of parish for physical or mental infirmity, or being instructed at home in the common school branches, or where school accommodations within twenty city blocks are inadequate. Children between fourteen and sixteen not lawfully and regularly engaged in some useful employment six hours a day are also subject to the act. Other districts have the option to adopt compulsory attendance, except that cities of over twenty-five thousand inhabitants have it for at least four months each year.

Parish Superintendent is *ex officio* secretary to board of directors of the parish, except in New Orleans. Visits each school district in his parish. Holds teachers' institute monthly or bimonthly except in New Orleans.

School Age is between six and eighteen, but in kindergartens between four and six.

School Directors are elected one for each police juror in each police jury ward in each parish. They are bodies corporate. Shall visit and examine schools and advise with trustees. Select teachers and fix their salaries. District Attorney shall act as counsel, except city attorney in New Orleans. Have authority to collect fifty cents per annum from parent or guardian of each child to provide fuel and comforts, not more than one dollar and fifty cents to be collected in each instance.

Separate Schools are required by the constitution.

State Board of Public Education consists of Governor, Superintendent of Public Education, Attorney General, and one citizen appointed from each congressional district. Are body corporate. Governor is *ex officio* president and State Superintendent is secretary. Prepare rules and regulations for schools. Enforce uniformity of text-books which shall not be changed in six years.

Superintendent of Public Education is elected by the people. Has general supervision of all school boards of the parishes. Visits parishes. Examines teachers.

Teachers must attend institute. Serve under written contract. Must have certificate or diploma. Must render monthly report before receiving salary. Have retirement fund in parish of Orleans.

Text-Books are free to indigent pupils.

Vaccination as a condition precedent to admission is required. Certificates of successful vaccination, or of three unsuccessful attempts which are good for one year, are required every five years.

§ 148. Maine.

Compulsory Attendance between seven and fifteen, unless receiving approved instruction elsewhere, and between fifteen and seventeen when education is deficient.

Districts are abolished except that those organized with special powers still exist with limited corporate powers. Towns take place of other former districts. Persons between five and twenty-one living at any marine station may attend any public school in the State without charge.

Evening Schools may be established by any town, admitting persons of any age, teaching only elementary branches, under direction of superintending school committee, except that drawing may be taught to persons over fifteen.

Manual Training Schools may be maintained by cities and towns under supervision of the superintending school committee, admitting persons between six and twenty-one years of age. They may include domestic science, agriculture, mechanic arts, and the trades.

School Age is between five and twenty-one, with compulsory attendance between seven and fifteen.

School Buildings not to be defaced or injured under penalty of double damages. Obscene defacing subject to fine of not more than ten dollars.

School Term is not less than thirty weeks annually.

Secret Societies as school organizations are under ban, and no pupil shall be a member of such under penalty of expulsion.

State Superintendent is appointed by Governor and Council. Has general supervision of all schools. Prescribes studies to be taught in common schools, but local committee may add thereto. Has examination of applicants for certificates.

Superintendent of Schools in each town is *ex officio* secretary of superintending school committee, and performs such duties as they shall direct, keeps records, acts as financial agent, employs teachers subject to approval of the committee.

Superintending School Committee of three, chosen by ballot at the annual town meeting, women being

eligible, may suspend for one year any school of too few pupils. May provide conveyances for pupils when necessary, or in lieu thereof pay the board of pupils near schools. Approve plans of schoolhouses, subject to approval by State Superintendent and State Board of Health. Make rules and regulations, have management of schools, custody and care of property, elect Superintendent of Schools, select textbooks, discharge teachers for cause after notice and investigation, expel pupils and restore them.

Teachers to the number of thirty or more may form association for mutual improvement and hold conventions at least once a year, one thousand dollars being appropriated for that purpose. Certificates are necessary. Either sex at sixty having taught thirty-five years, receives pension of two hundred and fifty dollars annually; if having taught thirty years the pension is two hundred dollars annually; if having taught twenty-five years the pension is one hundred and fifty dollars annually. For this purpose twenty-five thousand dollars are appropriated annually.

Text-Books, apparatus and appliances shall be provided by towns and loaned to pupils free of charge. Books not to be changed in five years unless by vote of town. No second-hand books to be purchased for any school. Parents and guardians may buy books for separate use. Books shall be uniform in each town.

Truant Officers, one or more, are elected annually by the superintending school committee. May arrest truants and take them to school on notification of

teacher. Towns may make by-laws concerning truancy.

Vaccination may be required in discretion of superintending school committee, and under penalty of exclusion.

§ 149. Maryland.

Compulsory Attendance is required in the City of Baltimore, between eight and fourteen at some day school regularly, unless receiving equivalent instruction elsewhere, unless mentally or physically incapacitated. Also required between fourteen and sixteen unless regularly and lawfully employed. For failure to comply person having control of child may be found guilty of misdemeanor. Same law is optional in other parts of State. Age for deaf and blind children is between six and sixteen.

County School Commissioners are appointed by Governor. Six members in larger counties and three in smaller counties. Are bodies corporate. Have supervision and control of all public schools in their county. Build and repair schoolhouses. Purchase and distribute text-books.

County Superintendent examines teachers. Acts as secretary and treasurer of County School Commissioners. Holds examinations for applicants for teachers' certificates. Presides at institute.

School Age is between six and twenty-one for whites, six and twenty for colored children.

School Districts are portions of a county.

School Term is ten months if possible.

School Trustees three in number are appointed by County School Commissioners. Have care of school-houses and lands. May suspend or expel pupils subject to appeal to County School Commissioners whose decision is final.

Separate Schools are established.

State Board of Education consisting of Governor, State Superintendent and six members, appointed by Governor with consent of Senate, have general care and supervision of public education. Decide controversies, and their decision is final. Remove County Superintendents.

Superintendent of Public Education is appointed or removed by Governor. Informs himself and State Board on condition of education in State. Diffuses information. Conserves interests and promotes efficiency. Conducts correspondence of State Board.

Teachers must hold certificates and take oath. Keep records and render reports quarterly before receiving salary. At age of sixty may be placed on "teachers' retired list", and receive a pension of two hundred dollars annually if without means of support. Must be nineteen if male, eighteen if female. Must attend institute. Care for condition of school rooms. Must render reports, pending which salary is withheld.

Text-Books are purchased upon competitive bidding, and are free to indigent pupils. Also may be free to others. May be privately purchased.

Transportation may be furnished to pupils in consolidated schools.

Truancy is guarded against in the City of Baltimore by attendance officers male or female, not exceeding nineteen in all. May be appointed in any other counties if desired. May arrest any truant without a warrant and deliver to parent, guardian or teacher. If habitual truant shall bring into juvenile court.

Vaccination is a condition precedent to admission into a public school.

§ 150. Massachusetts.

Athletic Associations of pupils, bearing name of school, are under control of School Committee.

Bible shall be read daily without written note or oral comment. Pupils may be excused therefrom on written request of parent or guardian.

Compulsory Attendance between seven and fourteen, and under sixteen where education is deficient. Exemptions are of those who are physically or mentally incapacitated, or those otherwise instructed in a manner approved in advance by the Superintendent of Schools, or School Committee. If over sixteen and under twenty-one with deficient education, must attend evening school if the town maintains one.

Correspondence Courses are established by the department of University Extension, agriculture being excluded. Twenty-five thousand dollars is annual appropriation.

Districts as such are abolished and towns or cities control. They shall provide and maintain a sufficient number of schoolhouses under penalty. The location is to be determined in town meeting.

Electors include women who are qualified.

Employment Certificates are issued to children between fourteen and sixteen.

Evening Schools may be maintained in any town, and shall be maintained in every city or town issuing twenty or more employment certificates. Persons over fourteen admitted. Evening high schools shall be maintained in cities of fifty thousand or more inhabitants upon petition of fifty or more persons who desire to attend.

Exclusion if permanent, and for misconduct, entitles pupil to a hearing.

Free Lunches may be provided for pupils by any city or town, or a charge not exceeding the cost may be made therefor, if so voted by a majority at the municipal election, upon petition of five per cent of the voters.

Manual Training as part of the school system shall be maintained in every city or town of twenty thousand or more inhabitants.

Nautical Schools may be maintained by towns.

School Age as to those under seven rests with local committee. Maximum age is governed by compulsory attendance laws.

School Committees of each town shall have general charge of all public schools. Select and contract with teachers, may personally examine them or accept normal school diplomas. May dismiss teachers. Shall prescribe courses of studies and books to be used. Shall employ Superintendent of Schools separately, or in joint committee for union of schools. Shall cause registers to be kept. Women are eligible to the office.

Schoolhouses except in the city of Boston, may be used for other education, recreation, social, civic, philanthropic and similar purposes, providing such use does not interfere with school purposes.

School Term of at least thirty-two weeks in general, but smaller towns with consent of Board of Education may hold twenty-eight weeks.

State Board of Education consisting of nine persons appointed by Governor and Council consolidated with Commission of Industrial Education. No compensation. Shall appoint Commissioner of Education to have supervision of all educational work, with two deputies. He suggests improvements and collects information.

Teachers to the number of twenty-five, of three contiguous towns, may have teachers' institute. Three thousand dollars, appropriated annually. Shall, before opening school, obtain from school committee a certificate in duplicate. Shall faithfully keep registers, and two weeks' salary preceding end of term are withheld pending return of report. Retirement system of pension and annuities is established. At sixty may be, and at seventy shall be retired.

Text-Books and other supplies are purchased by school committee at expense of the town, and loaned to pupils free of charge. Tools and cooking materials are also supplied free where such instruction is given. Text-Books for private ownership may be sold at not more than cost. Changes may be made in text-books by two-thirds vote of the school committee.

Transportation of pupils may be provided. Street or elevated railways, except the Boston Elevated

Railway Co., may charge not to exceed one-half regular fare.

Truancy is guarded against by truant officers. The school committee of every city and town shall appoint and fix the compensation of one or more truant officers, who may be either male or female. They shall not be paid by fees. Shall apprehend without a warrant and take to school any child under twenty-one who is employed in violation of law.

Vacation Schools may be maintained by cities or towns. Attendance not compulsory.

Vaccination is required as a condition precedent to admission unless excused by physician's certificate.

Vocational Schools for teaching industries, agricultural, and household arts may be established by towns or districts with State aid.

§ 151. Michigan.

Boards of Education consisting of five members elected at large control single or township district. Fill vacancies in Board until next election. Purchase school sites. Vote taxes for teachers' wages. Have custody of school property. Specify studies. Select and adopt text-books. Have general care of schools. Suspend or expel pupils.

Compulsory Attendance is required between seven and sixteen in public, private or parochial school, unless the eighth grade work has been completed and the child is lawfully employed, or physically unable to attend. Over fourteen may be excused if services are necessary to support of parents; or if attending

confirmation classes between twelve and fourteen, not to exceed five months in each year; or if under nine and lives two and one-half or more miles from school and transportation is not provided. Deaf children must attend between seven and eighteen in special school. Permit must be secured before employing children under sixteen.

County Superintendent is termed County Commissioner of Schools. Records granting of certificates. Visits schools. Counsels with teachers and school boards. Calls meeting of school officers of county at least once a year for consultation.

Electors may be male or female of certain qualifications.

School Age is over five. Between four and seven in kindergartens. No separate schools allowed for colored children.

School Board consists of three officers; a moderator, director and treasurer, elected by district. Must be taxpayers. Purchase sites and build schoolhouses. Hire teachers on written contract. Have care of schoolhouses. Shall open schoolhouse, when not in use, for public meetings unless district votes otherwise. Make rules for schools and property. Suspend or expel pupils for cause.

School Commissioner (see *County Superintendent*).

School Districts are townships or portions of townships and are bodies corporate. Fractional districts are those formed from two or more townships. When comprising entire township is termed single school district, and is then controlled by Board of Education

of five members. In upper peninsula a single school district may be divided into sub-districts. Certain large cities are also single school districts.

School Examiners consist of County School Commissioner and one other. Examine applicants for teachers' certificates. Questions are furnished under seal by State Superintendent. Appeal from decisions lies to probate court.

School Term is nine months in districts having four hundred or more children of school age; eight months in those having between thirty and four hundred, and at least five months in all other districts or share in school fund is forfeited.

Secret Societies are prohibited under penalty of such punishment as the Board shall deem expedient.

State Board of Education consists of four members who are elected by the people. Has general supervision of normal schools. Is body corporate.

Superintendent of Public Instruction is elected by the people. Shall have general supervision of public instruction. Is member and secretary of State Board of Education. Visits the educational institutions. Sees that Boards of Education and school districts observe the law. Reports annually to Governor. Prepares course of studies for district schools.

Teachers must be over eighteen and have certificates. Keep record and report. Attend institute. Retirement fund is provided.

Text-Books are selected by School Board, not to be changed in five years. Free to indigent children. May be free and loaned under vote of district. May

be privately owned by purchase in free districts. Contracting publisher shall file copies of books and give bond.

Truancy is guarded against by county truant officer appointed by County Commissioners of Schools, and detailed members of police force of cities. Boards of Education in graded school and upper peninsula districts may appoint. Parents or guardians not complying with attendance law shall be guilty of a misdemeanor.

Vaccination is not provided for by legislation, and as a condition precedent to attendance cannot be enforced under decisions.

§ 152. Minnesota.

Compulsory Attendance is required between eight and sixteen in public or private school. May be excused for satisfactory reasons. Persons having charge of truant child may be prosecuted for misdemeanor in not complying with attendance laws. Employment certificates may be issued to children between fourteen and sixteen.

Corporal Punishment properly administered is not unlawful.

County Board of Education consisting of chairman of County Commissioners, County Superintendent of Schools, and County Treasurer, has charge of unorganized territory to provide for education of children therein. Furnish school facilities to all children of school age therein.

County Superintendent is elected by the county

electors. Visits and instructs schools. Conducts teachers' institutes.

Electors in school matters may be women, who may also hold school office.

School Age is between five and twenty-one, but by vote of district those under six may be excluded.

School Board in common districts consists of three: a chairman, clerk, and treasurer, elected by the district. In independent districts consists of six directors, who choose their own officers. Boards fill vacancies until next election. They have general charge of the business of the district, schoolhouses, and interests of schools. Employ teachers. Visit schools. Make rules. Prosecute and defend actions. Members are peace officers in common and consolidated districts. Boards in independent districts may establish evening public schools, establish kindergartens open to children between four and six. Suspend or dismiss pupils for cause.

School Districts are common, special, and independent, all of which are public corporations. Common are numbered consecutively in each county. Joint districts are those situated in two or more counties.

School Term in common schools is at least eight months; smaller schools not less than five nor more than ten months.

Secret Societies unless sanctioned by directors are prohibited.

Superintendent of Education appointed by Governor with advice and consent of Senate has general super-

vision of all public schools. Has deputy and three other assistants, a rural school commissioner, and a supervisor of school libraries.

Teachers must hold certificates. Must attend institutes. Shall not be related by blood or marriage to the employing director except on unanimous vote of Board. Contract must be in writing. Must keep registers and report. Have insurance and retirement fund.

Text-Books in districts are provided upon vote of district, or when Directors deem it advisable they may contract for and purchase them, and provide for free use thereof, or sale at cost. Such adoptions or contracts shall be good for not less than three nor more than five years, during which time the books shall not be changed. Publishers before offering shall file copies and give bond.

Transportation may be provided in consolidated districts, or board may be provided for pupils. Also in other districts transportation may be provided for all pupils living more than one-half mile from school. Shall provide in October to April inclusive transportation for all pupils in joint districts living two miles or more from school, of ages between six and sixteen.

Truancy is guarded against by truant officers who may be appointed by the Board in any district. May arrest truant child and take to school. May receive salary but no fees. Prosecutions are by County Attorneys.

Vaccination may not be compelled, and, except during epidemics, children may not be excluded from the public schools for non-vaccination.

§ 153. Mississippi.

Board of Education is created by constitution, to consist of Secretary of State, Attorney General and Superintendent of Public Instruction. Decide appeals finally. General charge of educational interests.

County Board of Examiners consist of County Superintendent and two teachers appointed by him. Examine applicants for teachers' certificates.

County School Boards consist of one member from each supervisors' district. Fix boundaries and locate schoolhouses.

County Superintendents are appointed by Board of Education unless legislature makes the office elective. Employ teachers recommended by local trustees. Fix salaries of teachers and contract with them. Visit schools. Each County Superintendent is *ex officio* president of the local County School Board.

School Age is between five and twenty-one.

School Districts are separate for white and colored people. In counties not laid off by townships they shall be defined by streams, lines of farms, and otherwise.

School Term is at least four months, but at least seven months in separate districts.

School Trustees are three in number in regular districts, five in separate districts which are larger ones. Select teachers. May suspend or expel pupils for cause.

Separate Schools are required by the constitution.

State Board of Examiners consists of three teachers appointed by State Superintendent. Prepare examination questions for teachers, and grade the papers.

Superintendent of Public Instruction is elected by the people. Has general supervision of common schools and educational interests. Renders opinions when requested by County Superintendents.

Teachers must be licensed, and at least seventeen years of age. Contract must be in duplicate. Keep registers and report. May suspend pupils.

Text-Book Commission consists of eight educators appointed by Governor, one from each congressional district, and State Superintendent. Select and adopt uniform series of text-books not to be changed for five years. Advertise for bids and make contracts. Contracting publisher shall give bond.

Transportation may be provided in consolidated districts.

§ 154. Missouri.

Compulsory Attendance is required between eight and fourteen in some public, private, parochial or parish day school. Also between fourteen and sixteen unless regularly and lawfully employed. Private instruction at home may be a substitute. Temporarily excused for destitution, or for mental or physical infirmity. Employment certificates are issued to children between fourteen and sixteen.

County Superintendent is elected by voters of county. Has general supervision of county schools except in city, town and village school districts employing a local Superintendent. Visits schools. Examines teachers and grants certificates. With two teachers forms text-book commission in some counties.

County Text-Book Commission adopts from State list a uniform series not to be changed in five years. Contracting publisher shall file copies with State Superintendent, pay filing fee and give bond.

District Board of three members elected by district govern and control district. Employ teachers but have no power to dismiss them. Visit schools. Consult with teachers and exercise general supervision. Districts having two hundred or more children may organize into a town or city district as a body corporate. Such districts have six directors. Women are not eligible to the office of Director.

Night Schools may be established by Boards of Education in larger cities.

School Age is between six and twenty, but if funds are sufficient those between five and six and over twenty may be admitted.

School Term is eight months.

Separate Schools must be established for white and colored children.

State Superintendent is elected by the people. Supervises educational funds. Examines teachers and grants certificates.

State Board of Education consists of State Superintendent, Governor, Secretary of State and Attorney General. Exercise general supervision over educational interests.

Teachers must have certificates before beginning employment. Must keep registers and report, pending which last month's salary is withheld.

Text-Books may be free to indigent children, and

free to all children in any district upon vote of electors.

Transportation must be provided pupils residing two and one-half miles or more from school, and upon two-thirds vote of district may be provided for those living more than one-half mile from school.

Truancy is guarded against in districts of one thousand or more population by attendance officers who may arrest without warrant any truants and place them in school. Parents, guardians or other persons having control of such children may be prosecuted for misdemeanor if truancy continues.

§ 155. Montana.

Compulsory Attendance is required between eight and fourteen in a public, private or parochial school at least sixteen weeks each year. Excused for infirmity, or when properly instructed at home, or when attendance would be a hardship. Also applies between fourteen and sixteen unless lawfully and regularly employed on certificate. Parents or guardians not complying with attendance laws may be convicted of a misdemeanor.

Corporal Punishment may be inflicted, but except in case of open defiance the parent or guardian must first be notified. Such punishment must be without undue anger, and in presence of teacher and principal if there be one.

County Board of Examiners consists of County Superintendent, and two others who are or have

been teachers. Examine applicants and issue certificates.

County Superintendent may be of either sex. Elected by county electors. Has general superintendence of county schools. Visits schools and advises. Presides at institutes. Acts as truant officer in some districts. Decides controversies subject to appeal to State Superintendent. County Attorney is legal adviser.

School Age is between six and twenty-one, in kindergartens three to six.

School Districts are of three classes: first class with population of eight thousand or more; second class between one thousand and eight thousand; third class less than one thousand. First class have seven trustees, second class five, third class three. All are bodies corporate. Joint districts are those lying in two or more counties.

School Term is at least three months in isolated sections.

School Trustees may be of either sex and are elected by district. (For number, see *School Districts*.) Have custody of school property. May establish night schools. Prescribe and enforce rules for schools. Employ and discharge teachers. Build and remove schoolhouses. Suspend or expel pupils. Provide books, clothing and medical aid for indigent pupils. Visit schools. County Attorney is legal adviser.

Secret Societies are prohibited unless sanctioned by the trustees. Penalty is suspension, expulsion, or curtailment of school honors.

State Board of Education consists of eleven members

including *ex officio* the Governor, State Superintendent, and Attorney General. Have special charge of the higher State educational institutions.

State Board of Examiners have supervision and control of expenditures for higher State educational institutions.

State Text-Book Commission consists of seven members; contract for text-books, and exact bond from publisher.

Superintendent of Public Instruction is elected by the people. Has general supervision of the public schools. Prepares courses of study. Renders decisions to County Superintendents. Prepares examination questions for examination of teachers. Advertises for bids on text-books.

Teachers shall hold certificates, and contract in writing and in duplicate. Must be at least eighteen. May suspend pupils for cause. Keep registers and report. Must attend institute. Have retirement fund.

Text-Books may be free upon vote of district, in which event privilege of purchase at cost for private ownership shall be accorded.

Transportation is provided to other schools when district school is closed.

Truancy is guarded against by truant officers who shall be appointed in districts of the first and second class (see *School Districts*), and may be appointed in those of third class, but if not appointed County Superintendent shall act as such. May arrest truants and place them in school.

§ 156. Nebraska.

Compulsory Attendance is required between seven and fifteen, for at least twelve weeks in the smaller districts, and between seven and sixteen in city or metropolitan districts. The attendance is to be in a public, private or parochial school, unless instructed at home or elsewhere. Excused if regularly and lawfully employed if fourteen, or mentally or physically incapacitated, or lives more than two miles from school and free transportation is not provided. If blind or deaf must attend between seven and eighteen.

County Rural School Districts are confined to counties of less than seven thousand population. Are bodies corporate and in charge of a Board of Education consisting of five members elected at large. They establish a uniform system of public schools, maintain and manage them. May borrow money and issue bonds.

County Superintendent is elected by county electors. Visits schools. Forms new districts and changes boundaries. Examines candidates for teachers' certificates.

District Officers consist of a moderator, director, and treasurer elected by district. The moderator shall preside at meetings of the district. The director with concurrence of one other member hires teachers. Board has general management and makes rules for schools. May suspend pupils. Districts of more than one hundred and fifty children of school age may elect a district board of six trustees upon vote of electors.

Electors may be either male or female of specified qualifications.

School Age is between five and twenty-one.

School Districts are portions of a county and are bodies corporate. Large cities are separate districts. (See *County Rural School Districts*.)

School Term is at least four months in districts having less than twenty pupils, not less than seven months in districts having between twenty and seventy-five pupils, and not less than nine months in larger districts.

Secret Societies are absolutely prohibited as school organizations. Penalty is suspension or expulsion.

State Superintendent organizes teachers' institutes. Visits schools. Decides questions of school law. Prepares questions for examination of teachers.

Teachers must have certificates. Must attend institutes. Make monthly report to director.

Text-Books are purchased for the district by the local School Board, and are not necessarily adopted for a particular period. They are loaned to pupils free of charge.

Truancy is guarded against by truant officers appointed by Boards of Education in the larger districts, who may apprehend and take home or to school any truant child. Parents or guardians may be convicted of a misdemeanor if the truancy continues.

Transportation in a safe, inclosed, and heated conveyance shall be provided in consolidated districts, for all pupils living two miles or more from school. May be provided in any district by two-thirds vote.

§ 157. Nevada.

Compulsory Attendance is required between eight and sixteen in a public or private school or at home. Excused for mental or physical infirmity, completion eighth grade, or when the child's labor is necessary to support itself or parent, or when distance from school is deemed too great by the Deputy Superintendent. Children entitled to attend schools established by the United States, and where the expense of tuition, board and clothing of the pupils therein are borne by the United States, compulsory attendance therein is required of all children between eight and eighteen who are eligible to attend such school. If the United States does not furnish free transportation all-children living more than ten miles from such schools are excused from attendance.

Educational Districts are four in number, comprising one or more counties in each, and in each of which a Deputy Superintendent has charge of supervision. They are appointed by the State Board of Education. They visit schools and advise teachers. Conduct examinations for teachers' certificates.

Electors are of either sex.

School Age is between six and eighteen, in kindergartens between four and six.

School Districts are every village, town, or incorporated city. Those employing ten or more teachers are of the first class, smaller are of second class. Joint districts are parts of two or more counties.

School Term is at least six months, or at least eight months if funds are sufficient.

School Trustees are five in larger districts and three in districts of less than fifteen hundred school children. Are body corporate and are elected by district. Upon votes of heads of families may build, purchase, rent, buy or sell schoolhouses, change locations, manage and control school property. Employ teachers. Suspend pupils. Visit schools. Women are eligible. District Attorney is legal adviser.

State Board of Education consists of Governor as president, Superintendent of Public Instruction as secretary, and president of the University. Prescribe and enforce the courses of study. Grant certificates and life diplomas to teachers. Prepare questions for teachers' examinations.

Superintendent of Public Instruction is elected by the people. Visits schools, conducts institutes, advises with teachers.

Teachers must have certificates and take oath. Contract is to be in writing. Shall attend institute. Retirement fund is established. Shall not suspend or expel any pupil under fourteen.

Text-Book Commission consists of State Board of Education and four others appointed by the Governor. Receive bids and award contracts for text-books. Contracting publisher shall give bond.

Text-Books are loaned to pupils free of charge.

Transportation may be provided.

Truancy is defined as absence from school more than three days without valid excuse. Notice is then sent to parent or guardian who for subsequent offense may be convicted of misdemeanor. Boards of trustees

may appoint attendance officers who may arrest without a warrant any truant child and deliver to teacher, parent, guardian or other person in control of child.

§ 158. New Hampshire.

Compulsory Attendance is required of all children between eight and fourteen years of age, and also between fourteen and sixteen where education is deficient, unless excused by the School Board for infirmity, or for receiving equal instruction in a private school, approved by the district school board, for an equal period.

Districts legally organized are corporations. May borrow money upon promissory notes or bonds. May fix salaries of School Board and truant officers. May raise money to purchase wagons for transportation of pupils. May contract with literary institution for furnishing tuition. May maintain joint schools with other districts. May not fix length of school year, salaries of teachers, nor establish, locate or discontinue common schools. Officers are moderator, clerk and school board of three persons, treasurer, and one or more auditors and other necessary officers and agents.

Electors in district school meetings are male or female who are qualified, and have three months' residence.

Employment of Children over fourteen and under sixteen permitted on certificate.

Evening Schools shall be established upon petition of five per cent. of the legal voters of any city or town of more than five thousand inhabitants. Are under supervision of local school board.

School Age is from six to sixteen, with compulsory attendance between eight and fourteen.

School Board shall select and hire teachers, provide schools, and may provide conveyances for pupils. May dismiss teachers after hearing granted. May prescribe regulations for schools. Shall furnish blank registers to teachers. May grant use of schoolhouse for writing or singing school, and for religious and other meetings not to conflict with school use.

School Terms are to be such as will best subserve the interests of education.

State Superintendent at annual salary not to exceed four thousand dollars. Three deputies, one of whom shall be a woman, are appointed at annual salary not to exceed twenty-five hundred dollars. Shall hold examinations for teachers, at annual cost not to exceed three hundred dollars. Shall recommend text-books to school boards.

Teachers must have certificates, which may be issued without examination to those who have served three school years. Must keep register and return to school board, pending which twenty dollars of wages are withheld. Pension for any retired female teacher at fifty-five years, who has served thirty years as teacher in this, or any State. Male teachers pensioned at sixty years having taught thirty-five years. Either sex having taught fifteen years prior to age fixed, are pensioned *pro rata*.

Text-Books and other supplies shall be loaned free of charge to pupils at expense of city or town, and furnish at cost such as are desired for private owner-

ship. They must not be paid for out of school money, but selectmen must assess extra for them.

Truancy is guarded against by truant officers appointed by the local school board, and have authority without a warrant to take and place in school any children violating compulsory attendance law. Such officers cannot be paid out of school money. Districts may make legal by-laws concerning habitual truants.

Vaccination required of all children attending public, private or parochial schools unless they hold certificate of local board of health that they are unfit subjects, or have had smallpox.

§ 159. New Jersey.

Bible reading and repeating Lord's Prayer shall be the limit of religious exercises.

Boards of Education consist of five members in districts with population of less than forty-five thousand, and nine members in larger ones, but number may be reduced to five or three upon vote of district. Have control and management of school property, and hold title to it. Make rules for schools. May borrow money on notes. Employ and dismiss principals, teachers, janitors, mechanics and laborers. Suspend or expel pupils. Provide text-books and necessary school supplies.

Commissioner of Education is appointed by Governor. Salary ten thousand dollars per annum. Appoints four Assistant Commissioners at salaries of four thousand five hundred dollars each. One shall act in his place in his absence, one shall act as supervisor of

secondary education, one as supervisor of elementary education, and one as supervisor of industrial education. Designates one to hear controversies on school law. Has supervision of all public schools of the State.

Compulsory Attendance is required between seven and sixteen in a day school, unless receiving equivalent instruction elsewhere. Above fourteen may be granted an "age and schooling certificate." Parent, guardian or other person having custody and control of a child between seven and sixteen failing to comply with attendance law shall be deemed a disorderly person and be subject to fine or imprisonment or both.

Corporal Punishment is forbidden by statute.

County Superintendents are appointed by Commissioner of Education. Exercise supervision over schools of county except city schools having a Superintendent. Visit schools.

Evening Schools may be established in any district, open to persons over twelve. In such schools for foreign-born open to those over fourteen.

School Age is between five and twenty, also older persons if Board of Education so provides. No exclusion on account of religion, nationality or color. Age in kindergartens is between four and seven.

School Districts are each township, city, incorporated town and borough. They are bodies corporate.

School Term is not less than nine months.

State Board of Education consists of eight members no two of whom shall be residents of the same county, appointed by the Governor. Has control of the higher

State educational institutions and general supervision of educational matters. Decides appeals from Commissioner of Education. Reports to legislature.

State Board of Examiners consists of Commissioner of Education, principals of State normal schools, a County Superintendent, and a City Superintendent of schools. Hold examinations and grant certificates.

Teachers must hold certificates and be at least eighteen. Keep register. May suspend pupils. Participate in pension or retirement fund after thirty-five years' service under certain conditions, also for shorter service.

Text-Books shall be furnished free of cost.

Transportation may be provided for pupils living remote from school.

Truancy is guarded against by attendance officers in each district who shall take each truant to teacher, parent or guardian.

Vaccination may be required of teachers and pupils unless certificate of unfitness be furnished.

§ 160. New Mexico.

Boards of Education of five members have charge of school affairs in each incorporated city, town or village. Control schools and school property. Are bodies corporate. May hire City or District Superintendents.

Compulsory Attendance is required between seven and fourteen in some public, private or denominational school, unless residing more than three miles from school or physically incapacitated. Failure may sub-

ject parent or guardian to fine or imprisonment. Age for the deaf and mute is between eight and twenty-one. Age for the blind is between five and twenty-one.

County Superintendent is elected by the county electors. Takes oath and gives bond. Has jurisdiction over all county public schools except in cities. Visits schools. Supervises methods. Consults with directors. Enforces compliance with law.

Electors may be women unless woman suffrage is suspended by a majority petition of the district.

School Age is between five and twenty-one.

School Directors are three in number. They control rural districts which are other than those of incorporated cities, towns and villages.

School Districts are bodies corporate. They are either municipal or rural.

School Term is not less than seven nor more than nine months in rural districts, and not less than nine months in municipal districts.

State Board of Education consists of Governor, State Superintendent and five others appointed by Governor. Grant, renew, and revoke teachers' certificates, adopt text-books and uniform course of study, exercise general control over public schools. May contract with publishers for text-books.

Superintendent of Public Instruction of either sex is elected by the people. Holds teachers' institutes each year for at least two weeks. Has general supervision of public education. Shall give written opinions to County Superintendents upon school questions, upon which he may advise with the Attorney General.

Teachers must hold certificates. Must furnish physician's certificate of freedom from tuberculosis. Keep records and make report.

Text-Books are loaned free to indigent children.

Vaccination is a condition precedent to attendance.

§ 161. New York.

Boards of Education of three to nine members control in union free school districts or cities. Are bodies corporate. Duties are practically same as *School Trustees*, (*q.v.*). May maintain night schools free to all residents, and kindergartens free to resident children between four and six.

Central Rural Districts may be laid out in any territory exclusive of city school districts. Transportation of pupils may be provided.

Compulsory Attendance in districts of five thousand or more population employing a Superintendent of Schools, is required of those in proper physical and mental condition, between seven and fourteen, and between fourteen and sixteen unless regularly and lawfully employed on a certificate. In other districts the compulsory age is between eight and fourteen, and between fourteen and sixteen unless regularly and lawfully employed. This law includes blind children. Employed boys of deficient education, between fourteen and sixteen must attend night school. Equivalent instruction elsewhere than in public school may be substitute. Parent or guardian of truant may be prosecuted for misdemeanor.

Commissioner of Education is chief executive officer of State system of education and Board of Regents. Salary is seven thousand five hundred dollars annually. Has general supervision of schools. Advises school officers. May issue teachers' certificates. Prescribes regulations for examination of teachers subject to approval of Regents. Appoints institutes.

District Superintendents are elected by board of school directors; if they fail to elect within specified time the county judge shall appoint. May be of either sex and must become a resident of the county. Sees that boundaries of district are properly described, and corrects them. Assembles teachers for conference. Advises trustees. Examines and licenses teachers, and examines charges against them. Appeal lies to Commissioner of Education.

Indian Children between six and sixteen are subject to compulsory attendance law, and parent or guardian subject to penalty for non-attendance of children.

Industrial Schools may be established in any city by the officer or officers having charge of the public schools.

Nautical School is established at New York city.

School Age is between five and twenty-one.

School Directors are two in number elected for each town. Those within a supervising district together constitute a board of school directors.

School Districts are parts of commissioner districts. They are cities, union free school districts, common school districts, central rural districts, and school neighborhoods.

School Neighborhoods are territories adjoining other States in which the children are authorized to attend the schools of such other States.

School Term is fixed by trustees, but shall be at least one hundred and sixty days of actual school.

School Trustees shall be from one to three trustees as the district determines. Union free school districts have from three to nine as the district determines. Both are bodies corporate. Purchase or lease sites, provide rooms, apparatus and supplies. Have custody and keeping of schoolhouses, sites and appurtenances. Contract with teachers, fix compensation and school term. Establish rules, prescribe courses of studies.

Separate Schools may be established for colored children upon vote, but no person shall be refused admission into or be excluded from any public school on account of race or color. Shall be established for Indian children on reservations.

Supervisory Districts are those covering the territory embraced in school commissioner districts outside of cities, and of school districts of five thousand or more population, which employ a Superintendent.

Teachers must be at least eighteen, licensed, and have contract in writing. Shall not be related by blood or marriage to employing trustees or Board of Education except on two-thirds vote of district. Retirement fund is established.

Temporary School Districts may be established outside of cities and union districts. They apply to sections of temporary habitation such as camps. Open free to children and adults.

Text-Books are designated in cities and union free school districts by Boards of Education, and in common school districts at an annual school meeting by two-thirds vote of legal voters present and voting. Such designations are for five years unless superseded by three-fourths vote. Are free in union school districts upon majority vote.

Truancy is guarded against by attendance officers appointed by school authorities in each city, union free school district, or common school district. Town boards also appoint such officers. They may arrest without warrant any truant child between seven and sixteen and deliver to teacher, or in case of habitual truants to a police magistrate.

§ 162. North Carolina.

Compulsory Attendance for deaf children is five school terms of nine months, between eight and fifteen. Is required of other children between eight and twelve for four months of each term, in a public, private or church school which renders such reports as are required of the public schools. Age for compulsory attendance may be extended in any county. Exemptions are for mental or physical incapacity, or where the child resides two and one-half or more miles from school, or where for extreme poverty the child's labor is necessary to the support of itself or parents, or where poverty deprives the child of books and clothes. Children between twelve and thirteen may be employed on certificates.

County Board of Education is composed of three members appointed by the legislature. Has corporate powers. Controls the time that schools may be in session. Builds and repairs schoolhouses. Makes rules for schools.

County Superintendent is elected by the County Board. Visits schools. Is *ex officio* secretary of County Board. Holds township teachers' meetings.

School Age is between six and twenty-one.

School Districts are divisions of townships, or may be formed out of contiguous portions of counties.

School Committee for township or district is composed of three. Have care of school property. Employ and dismiss teachers upon charges, notice and hearing. Women are eligible to serve on committees of rural and graded schools.

School Term is at least six months.

Separate Schools are provided for white, colored, and Indian children. However remote the strain, children of negro blood shall not be classed as white.

State Board of Education consists of Governor as president, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction as secretary, and Attorney General. Has corporate powers. Makes rules for schools.

Superintendent of Public Instruction directs operation of school system and enforces the law. Publishes school law. Is secretary of text-book commission and officer in many educational institutions.

Teachers are elected by the school committee and approved by the County Superintendent. They must

be at least eighteen and hold certificates. Keep records and report. Attend institute every two years. Dismiss pupils who are immoral, or who willfully and persistently violate rules.

Transportation may be provided in consolidated districts.

Truancy is guarded against by attendance officers appointed by County Board of Education for each township. After notice and failure to render satisfactory excuse the parent or guardian of a truant child may be prosecuted and fined, and for non-payment thereof may be imprisoned.

§ 163. North Dakota.

Bible shall not be considered sectarian nor excluded. Teacher may read from it. Pupils shall not be required to read it, nor to be present when read, contrary to wishes of parent or guardian.

Boards of Education consisting of five members have management of school affairs in special districts. Must keep school open not less than seven nor more than ten months each year.

Compulsory Attendance is required between eight and fifteen in public, private or parochial school. Feeble-minded, blind, and deaf between seven and twenty-one. Excused if no school within two and one-half miles unless transportation is provided, or if child's help is necessary to support of family, or physically or mentally incapacitated, or has already acquired the taught branches. Parents, guardians or other person having charge of truants may be convicted of a mis-

demeanor. Children between fourteen and sixteen may be employed on certificate.

County Superintendent is elected by voters of each county. Has general superintendence of schools in his county. Visits schools. Holds annual meeting of school officers. Decides controversies.

School Age is between six and twenty-one, in kindergartens from four to six.

School Directors are three in number. Have general charge, direction and management of the schools, and property. Make rules. Suspend or expel pupils. Employ teachers but except by unanimous vote not those related by blood or marriage to a director.

School Districts are bodies corporate and consist of not less than one congressional township, or one civil township. Any city, or incorporated or platted town or village may constitute a special school district in which a Board of Education of five members shall have management. Independent school districts are those of larger cities, with a director from each ward.

State Board of Education is composed of president of University, president of Agricultural College, State Superintendent of Public Instruction, State Inspector of Graded and Rural Schools, State High School Inspector, State Normal School president, and an industrial school president, a County Superintendent and a citizen.

Superintendent of Public Instruction is elected by the people, has general supervision of schools. Prescribes course of study. Advises County Superintendents.

Teachers must hold certificates and shall not receive less than forty-five dollars per month. Keep register

and reports. Attend institutes. May suspend pupils for not more than five days. Have insurance and retirement fund.

Text-Books may be loaned free to pupils or sold at cost. Shall not be adopted for more than three years. Contracted for by school board or Board of Education of every district. Contracting publishers shall file copies and bond.

Transportation may be provided in any district, and shall be provided in consolidated districts.

§ 164. Ohio.

Boards of Education of districts vary from two to seven members, who furnish necessary schoolhouses and grounds and keep them in repair. May open schoolhouses for educational meetings or any other lawful purpose not interfering with schools. Prescribe courses of study. Have control of all public schools in district. Fix salaries of teachers.

City Board of Examiners of three members, for each city school district is appointed by Board of Education.

Compulsory Attendance is required between eight and fourteen and from fourteen to sixteen unless regularly employed, in a public, private or parochial school for at least twenty-eight weeks. Excused for mental or physical infirmity, or for receiving competent instruction at home. Employment certificates are issued between fourteen and sixteen.

County Board of Examiners of three are appointed by judge of probate. Hold public meetings for examination for teachers' certificates.

Evening Schools shall be established in any district upon petition of twenty-five youths of school age.

School Age is between six and twenty-one.

School Districts are mainly city, village, and township; and all others are special.

School Term is at least twenty-eight weeks.

Secret Societies are prohibited under penalty of fine of ten to twenty-five dollars for membership therein.

State Board of Examiners consists of five persons, not more than three of the same political party. Issue life certificates to teachers.

State Commissioner of Common Schools is elected biennially. Supervises school fund. Distributes laws. Reports to Governor.

Teachers may be appointed for one to four years. Exercise care for school property, strive to guard health of pupils. Have retirement fund.

Text-Books are adopted for five years. May be loaned free of charge by the Board of any district.

Transportation must be provided when schools of sub-districts are suspended. May be provided in special school districts, also in village school districts.

Truancy is guarded against by truant officers who may take into custody any truant and place him in school. Parents or guardians may be prosecuted for permitting truancy.

Vaccination is within control of the Board of each district, and may be made a condition precedent to attendance.

§ 165. Oklahoma.

Boards of Education control in independent districts, one member being elected from each ward, except in cities of over fifty thousand two are elected from each ward provided the wards do not exceed five. Women may serve.

Boards of Examiners in each county composed of County Superintendent and two others, examine applicants and issue teachers' certificates.

Common School Districts are corporations. Joint districts are those lying in two or more counties. Independent districts are the larger cities and towns. Are bodies corporate.

Compulsory Attendance is required between eight and sixteen, of all children and wards unless physically or mentally incapacitated, at least sixty-six per cent of the school days, in a public, private, or other school. Parents or guardians not observing this law may be prosecuted. Employment certificates may be issued to children under sixteen. Deaf children between seven and twenty-one must attend school for deaf.

County Superintendent supervises the public schools of the county. Visits schools. Forms districts.

District Boards consist of three, a director, clerk, and member, elected by the voters of the district. Purchase or lease sites. Have care of schoolhouse and property. Contract with teachers in writing, and they shall not be related to any member of the Board. Provide school supplies.

School Term is not less than three months, and is of such length as may be voted by the district.

Secret Societies are prohibited under penalty of suspension or expulsion.

Separate Schools are provided for colored children, declared to be those who possess any quantum of negro blood. It is illegal to attend any school established for a different race.

State Board of Education consists of seven members including the State Superintendent and six others appointed by Governor. Have supervision of the higher State educational institutions. Supervise public schools.

State Superintendent has supervision and management of the educational interests. Gives written opinion upon request of City or County Superintendent. Issues teachers' certificates to graduates of high schools and agricultural schools which are good for two years. Prepares questions for County Board of Examiners.

Teachers shall have certificates. May suspend pupil during current quarter, and such pupil has right of appeal to Board of Directors.

Text-Books are free to indigent children.

Text-Book Commission consists of Governor and six others. Select books and supplies. Advertise for bids. Contracting publisher gives bond. May publish books.

§ 166. Oregon.

Compulsory Attendance is required of children between nine and fifteen in a public school. Excused for similar attendance in private or parochial school; if physically incapacitated; if between nine and ten and lives more than one and one-half miles from

school; if being properly taught at home. Parents or persons in parental relation are prosecuted for non-compliance with this law, and the penalty is fine or imprisonment.

County Superintendent is elected by voters of each county. Reports to State Superintendent. Hears and determines appeals from teachers and district officers, subject to appeal to Superintendent of Public Instruction. Holds teachers' institutes. Attends County Superintendents' convention called by Superintendent of Public Instruction. District Attorney is legal adviser.

District School Board varying from three to five members visits and inspects schools. May exclude refractory pupils during current term. Furnish fuel and supplies. Upon vote of electors may select sites, remove schoolhouses, buy and sell property both real and personal. Contract with teachers who shall not be related to a member within third degree by either blood or marriage, except upon unanimous concurrence of Board. May dismiss teachers for cause. May allow school-houses to be used for certain other purposes.

Electors may be of either sex.

Evening Schools may be established in districts of the second class (see *School Districts*), without restrictions as to age or citizenship.

School Age is between six and twenty-one, in kindergartens over four.

School Districts are divisions of counties. Those with one thousand or more children of school age are first class; between two hundred and one thousand

second class; less than two hundred are third class. All are bodies corporate.

School Term is at least six months.

Secret Societies are unlawful and those who become members may be suspended or expelled.

State Board of Education consists of Governor, Secretary of State, and Superintendent of Public Instruction. Authorizes series of text-books recommended by text-book commission. Prepares course of study. Prescribes rules for schools.

State Board of Examiners appointed by State Superintendent consists of as many teachers as he may deem necessary. Examine applicants and grade them.

Superintendent of Public Instruction is elected by the people. Exercises general supervision of school officers and affairs. Visits counties. Attends county institutes. Keeps statistics. Acts as secretary of State Board of Education. Decides cases on appeal. Reports to legislature. Issues certificates.

Teachers must hold certificates and be at least eighteen. Keep register and make report pending which last month's salary is withheld. Have retirement fund.

Text-Book Commission of five appointed by Governor, consider and adopt text-books.

Text-Books by vote of district or report of clerk may be loaned to indigent children.

Transportation upon vote of district shall be of pupils residing more than two miles from school, or may pay board near by if not more expensive. And may furnish other transportation of pupils within two miles in their discretion.

Truancy is guarded against by truant officers who investigate and send notice to parent or guardian.

Vaccination may be required by district board.

§ 167. Pennsylvania.

Bible shall be read, at least ten verses every day, without comment.

Compulsory Attendance is required between eight and sixteen in a day school. May be excused for mental, physical or urgent reasons. Employment certificates may be issued to children between fourteen and sixteen. Parents or guardians may be found guilty of misdemeanor for not complying.

County Superintendent is elected every four years by School Directors of county. Visits schools. Inspects grounds and buildings. Has one or more assistants if he has charge of more than two hundred teachers. Holds institutes.

School Age is between six and twenty-one, without distinction of race or color.

School Directors for first class districts known as Board of Education, are fifteen in number appointed by the court of common pleas. Second class, nine elected at large. Third class, seven elected at large. Fourth class, five elected at large. Each Board may appoint a solicitor. Make rules and regulations. Exercise general supervision. Provide grounds and buildings.

School Districts are each city, incorporated town, borough, or township, and are constituted separate school districts. Those of five hundred thousand or

more population are termed of the first class ; between thirty thousand and five hundred thousand are of the second class ; between five thousand and thirty thousand are of the third class and of less than five thousand are of the fourth class. All are bodies corporate.

School Visitors are elected, seven from each ward, in districts of the first class. Visit public elementary schools. Suggest to directors. Report in writing to Board of Education every three months.

State Board of Education of six members is appointed by Governor. State Superintendent is *ex officio* a member and president thereof. Report and recommend to legislature.

Superintendent of Public Instruction has supervision of all public schools. Reports annually to legislature. Gives advice and information. Appoints two deputies. Prescribes minimum course of study. Gives decisions on school law.

Teachers must have certificates and be at least eighteen. Contracts in districts of second, third, and fourth class, shall be in writing and in duplicate. If related to member of Board must receive votes of three-fourths of all members of Board. Minimum salary is forty dollars per month. Must attend institute. Have retirement fund.

Text-Books are supplied by school directors free of cost.

Transportation may be provided in any district, and shall be provided in any district of the fourth class when a school is closed and pupil resides one and one-half or more miles from the school to which he is assigned.

Truancy is guarded against by attendance officers who shall be appointed in districts of first, second, and third class, and may be appointed in fourth class. May arrest truants without warrant, notify parent or guardian, and place in school.

Vaccination is a condition precedent to admission.

§ 168. Rhode Island.

Commissioner of Public Schools is elected by State Board of Education.

Compulsory Attendance of every child who has completed seven years of life and has not completed fifteen years of life unless he has completed the eight years of prescribed studies, or shall have completed fourteen years of life and been granted an employment certificate. Private schools or approved private instruction may be substituted. May be excused for cause.

Districts are abolished except that corporate powers and liabilities of any heretofore existing shall continue and remain so far as necessary. (See *Towns*.)

Employment Certificates are issued to children between fourteen and sixteen.

Evening Schools may be established by towns.

Exclusion shall not be on account of race or color, nor for being over fifteen.

School Committee of three residents of each town who need not be electors. They shall elect a Superintendent of Schools, choose chairman and clerk either of whom may sign papers, locate schoolhouses, arrange for pupils to attend in adjoining towns, suspend pupils, select teachers and dismiss them upon notice and hear-

ing. Appeal may be had from their decision to the Commissioner who may, and if requested shall, lay the facts before one of the justices of the supreme court whose decision shall be final. Rules may prohibit appeals for trifling causes. Parties may agree that decision of the Commissioner shall be final.

School Term for at least thirty-six weeks.

State Board of Education consisting of Governor, Lieutenant Governor, as members *ex officio*, and one member from each county (five) except Providence county which shall have two other members are elected by the legislature. They shall elect a Commissioner of Public Schools who shall be secretary of the Board. The Governor is president. They shall prescribe all rules and regulations. Private schools shall report to them. Provide for the instruction of adult blind residents at their homes. The Board receives no compensation but expenses are paid.

Teachers shall have certificates which may be annulled after notice and hearing. Shall keep registers. Institutes are held under direction of Commissioner with annual appropriation of five hundred dollars. Annual salary shall be not less than four hundred dollars. Must hold fire drills or rapid dismissals at least once each month. Pensioned after thirty-five years' service, of which twenty-five shall have been within State, fifteen of which shall have been immediately preceding retirement, amounting to sum equal to one-half salary of five years next preceding, but in no case more than five hundred dollars annually.

Text-Books as far as practicable shall be uniform, supplied by each town and loaned to pupils free of charge, no change of books to be made in three years unless by consent of Board of Education.

Towns shall establish and maintain public schools. Two or more towns aggregating sixty or less schools may unite to employ joint Superintendent. All Superintendents shall have certificates from State Board of Education.

Transportation may be provided.

Truancy is guarded against by one or more truant officers appointed by each town.

Vaccination is required, and no pupil may attend without certificate of vaccination or non-fitness therefor.

§ 169. South Carolina.

Compulsory Attendance is required between eight and fourteen, and between fourteen and sixteen unless regularly employed, in a public school, or in some private or church school keeping record and rendering reports. Excused for mental or physical incapacity, or where child resides two and one-half miles or more from school and transportation is not furnished, or for extreme poverty, or for good and sufficient reasons. Parents or guardians may be found guilty of misdemeanor for non-compliance, and subject to fine and imprisonment for non-payment thereof. This law is not operative in any district until the electors so vote.

County Board of Education consists of County Superintendent and two others appointed by State Board of Education. Examines applicants for teachers' certifi-

cates and issues them. Are advisory board to County Superintendent.

County Superintendents are elected in each county. Visits schools and recommends improvements.

School Age is between six and twenty-one, in kindergartens from four to six.

School Districts are divisions of counties, formed or changed by County Board of Education. Are bodies corporate. City of Charleston consists of six districts in charge of Board of School Commissioners.

School Term is fixed by district trustees and must be at least three months each year.

School Trustees of three in number are appointed by the County Board of Education for each district. Have local management and control. Visit schools. Employ and discharge teachers. Suspend or dismiss pupils. Provide schoolhouses. Manage school property.

Separate Schools are required by the constitution.

State Board of Education consists of Governor as chairman, State Superintendent as secretary and seven others appointed by the Governor, one from each congressional district. Regulate examination of teachers, adopt rules for their own regulation and of the public schools, prescribe courses of study, and uniform textbooks, contract with publishers who shall give a bond.

Superintendent of Education is elected by the people. Has general supervision of public schools and funds therefor.

Teachers must have certificates. Keep register and report to clerk of trustees. Must not be related to a

trustee except on written approval of County Board, and written request of majority of pupils' parents.

Text-Books are loaned free to indigent children and provided at cost to others. Are contracted for by State Board of Education, not to be changed in five years except when authorized by legislature.

Vaccination is a condition precedent to admission if local law requires vaccination.

§ 170. South Dakota.

Compulsory Attendance is required between eight and sixteen in some public or private day school until eighth grade is finished. Excused if competent instruction is given elsewhere, or if mentally or physically incapacitated, or if in the opinion of court or judge enforcement of law would not be humane. Persons in parental relation may be fined for allowing truancy.

County Board of Education advertises for bids and select text-books.

County Superintendent is elected by county voters and has supervision of public schools of the county. Visits schools. Holds district institutes. Advises with school officials.

District School Board consisting of a chairman, clerk, and treasurer are elected by voters of district. Have general charge, direction and management of schools and property. Employ teachers.

School Districts are usually townships, and are bodies corporate. Cities and towns are independent districts.

State Board of Regents of Education of five members appointed by Governor, have charge of educational interests of State.

Superintendent of Public Instruction supervises county schools, high schools, City and County Superintendents. Holds convention of County Superintendents. Renders written opinions when requested by a County Superintendent. Examines applicants and issues certificates. May appoint a deputy.

Teachers must have certificates, and contract in writing and in duplicate. Statute makes many duties part of contract whether expressed therein or not. Keep register and make report.

Text-Books are contracted for for five years. Free to pupils upon petition of a majority of electors of a district.

Transportation of pupils living more than two and one-half and less than three miles from school is provided for by allowing parent ten cents per day for each pupil; three to four miles, twenty cents; four to five miles, thirty cents; more than five miles, forty cents per day for each pupil. Such allowance not to exceed that for two pupils, and is for actual attendance. Transportation or board is provided for children in unorganized territory to enable them to attend in an organized district. In consolidated districts may be provided for children living more than two miles from school.

Truancy is guarded against in cities and towns comprising independent districts, by truant officers appointed by the local Board of Education. In other

districts the County Superintendent is *ex officio* a truant officer.

§ 171. Tennessee.

Bible to the extent of at least ten verses must be read every day without comment. Pupils are excused from being present at such reading upon written request of parents.

Boards of Education of six members may be appointed in any municipal corporation by the mayor and aldermen, or the mayor and aldermen may establish and maintain a system of high graded schools. Women are eligible to serve thereon.

Compulsory Attendance is required between eight and fourteen, and between sixteen and eighteen unless regularly employed, in some public, private or parochial school at least eighty consecutive days unless school term is less, then for full term, in each year. In larger cities longer attendance may be required. Excused for extreme poverty, or mental or physical incapacity, or when child lives more than two miles from school and transportation is not furnished. Parent or guardian may be convicted of misdemeanor for non-compliance.

County Board of Education consists of five, one elected by county court from each school district and the others if any, at large. County Superintendent fills vacancies, and acts as secretary. They select teachers, fix their salaries, erect and repair schoolhouses. Locate schools. Visit schools. Dismiss teachers for cause. Buy, transfer, sell, care for, manage and control school property. May exercise eminent domain.

County Superintendent is elected by county court and may be of either sex. Supervises public schools. Visits schools. Acts as secretary of County Board of Education.

District Advisory Board of three in each civil district elected by voters of district. Supervise schools and property. Recommend and report to County Board. Suspend and dismiss pupils subject to appeal to County Board.

School Age is between six and twenty-one.

School Districts consist of five in each county, if so many exist.

Separate Schools must be maintained.

State Board of Education consists of nine members appointed by Governor, he being president *ex officio*, with State Superintendent secretary and treasurer *ex officio*. Report to legislature. Supervise normal college and schools, keeping them separate for white and colored pupils.

State Superintendent is nominated by the Governor and confirmed by the Senate. Is secretary and treasurer of State Board of Education. Collects and distributes information relating to public schools. Visits and inspects schools. Prescribes mode of examining and licensing teachers. Issues certificates to teachers. Reports to Governor.

Teachers must have certificates and be at least eighteen. Certificates will not be issued to persons addicted to the use of intoxicants, opiates, or cigarettes. Must keep records and make report. Must have contract in writing and in duplicate. May suspend pupils

subject to decision of County Board. Must attend institute.

Text-Books are free to indigent children.

Text-Book Commission consists of Governor, State Superintendent, and three others appointed by Governor. Select and adopt a uniform series of text-books, not to be changed in five years. Sub-commission of five teachers or Superintendents examine books and recommend to Commission who advertise for bids. Contracting publisher shall give bond, not to be exhausted by a single recovery.

Transportation may be furnished in consolidated districts.

Truancy is guarded against by attendance officers. Every city maintaining a separate system having a scholastic population of five thousand or more, shall, by the Board of Education, elect one or more such officers. If less than five thousand may elect. Also may elect in counties. They serve notice of truancy on parent or guardian, and may arrest without a warrant a truant child and place in school.

§ 172. Texas.

Compulsory Attendance is required between eight and fourteen in a public, private or parochial school, unless properly instructed at home, or unless child is mentally or physically incapacitated, or lives more than two and one-half miles from nearest school for same race, with no free transportation provided, or if more than twelve and services are necessary to support of parent or guardian. Parents or

guardians may be fined for non-observance of this law.

County School Trustees five in number, elected by the county voters, have general management and control of the public free schools in each county. Classify schools. Prescribe course of study.

County Superintendent is elected in all counties having three thousand scholastic population, and in those of lesser number upon petition of voters. Has immediate supervision of educational matters. Conducts County Institute. Apportions funds. Approves contracts and vouchers.

School Age is between seven and twenty-one, but others may be admitted by the trustees in their discretion. Kindergartens between four and seven.

School Districts are parts of counties. May be consolidated to secure high school advantages. Cities, towns and villages may be independent districts with seven trustees.

School Trustees three in number are elected by voters of district. Are bodies corporate. Contract for buildings. Manage and control public schools. Employ and dismiss teachers who may appeal to County Superintendent. Independent districts have seven trustees.

Separate Schools must be maintained.

State Board of Education consists of Governor as president, Secretary of State as secretary, and Comptroller. Apportions school funds. Makes rules and regulations.

State Superintendent of Public Instruction is elected by the people. Administers school law. Superintends

business relating to public schools. Hears and determines appeals subject to review by State Board of Education.

Teachers must have certificate, be not less than sixteen, and not be related to any member of the School Board by affinity within second degree, or by consanguinity within third degree. Keep registers and make reports.

Text-Books are selected by State Text-Book Board of eleven members, and adopted for six years. Free books are at option of each district.

Truancy is guarded against by attendance officers who may be elected by school trustees. They warn parents or guardians of truants.

Transportation must be provided for children between seven and seventeen living more than three miles from school.

§ 173. Utah.

Boards of Education of each county school district of the first class shall consist of five members, one elected from each representative precinct. Estimate funds needed. Such Boards in larger cities of first and second class are from each ward.

Compulsory Attendance is required between eight and sixteen in public, district or private school, at least twenty weeks in each year, and in cities at least thirty weeks. Excused for proper instruction at home; deficient mental or physical condition; not living within two and one-half miles of school; services being necessary to support of mother or invalid father. Parent

or guardian willfully failing to comply may be convicted of misdemeanor.

County Superintendent is elected by county voters. Has superintendence of all district schools except in cities of first and second class. Supervises boundaries. Visits schools. Decides controversies. Holds teachers' institutes. Conducts teachers' examinations.

School Age is between six and eighteen in district schools.

School Districts are counties, each of which constitutes a county school district of the first class, but in special instances of larger population more than one such district may exist in the same county. Each district is divided into five representative precincts. Such districts use books adopted by the State Text-Book Commission. All districts are public corporations.

School Term is fixed by district trustees.

School Trustees, three in number are elected by voters of district. Have general charge, direction, and management of schools, and care, custody, and control of property. Employ and dismiss teachers. May suspend pupils.

State Board of Education consists of State Superintendent of Public Instruction, president of University, president of Agricultural College, and six other persons appointed by Governor without reference to residence, occupation, party affiliation, religion or sex. Have general control and supervision of public school system. Promote libraries and gymnasiums. Conduct examinations for teachers in county school districts of the first class.

State Superintendent of Public Instruction is elected by the people, and is charged with administration of the public school system. Visits schools. Advises with officers. Gives written answers to questions on school law. Reports to legislature.

State Text-Book Commission consists of State Superintendent of Public Instruction, president of University, president of Agricultural College, principal of Normal School, and five resident citizens appointed by Governor, three of whom shall be Superintendents of Schools. Adopt text-books for all district and high schools except in cities of first and second class. Adopt books not to be changed in five years.

Teachers must have certificates. Must contract in writing. Keep register and report. Attend institutes. May suspend pupils for not more than five days. Have retirement fund.

Text-Books are free of cost, and by constitutional provision may not be prescribed by either legislature or State Board of Education. In cities of first and second class are selected by Board of Education for five years. Contracting publisher shall give bond.

§ 174. Vermont.

Commissioner of Education is appointed for indefinite term, and is secretary of the State Board of Education by whom he is appointed. He shall make full reports to the Board and make recommendations. He shall appoint State supervisors. His decision on residence of a pupil is final.

Compulsory Attendance is required of children between eight and sixteen unless mentally or physically unable to attend, or are otherwise furnished with the same education, or legally excused in writing by the Superintendent. May be excused at fifteen. Indigent children are supplied with the necessary clothing. School Board may employ a teacher to instruct disabled children at home.

Discipline may include corporal punishment.

Districts as divisions of towns are abolished, and a town constitutes a district, except such districts as are incorporated by special acts. Towns may borrow money.

Electors on matters pertaining to schools and school officers are of either sex, and either sex may hold offices relating to school affairs. But women are not subject to poll taxes.

Evening Schools may be maintained by towns for persons above compulsory school age.

School Age is between six and eighteen, compulsory between eight and sixteen, but older pupils may attend. "Between" means from day of beginning of age first specified to day preceding beginning of age last specified. Kindergartens may be established by towns, open to children under six.

School Directors in towns of more than four thousand inhabitants are elected on a separate ballot in a separate ballot box. A Board consists of three citizens of the town. They have care of the school property of the town, and management of its schools, make regulations, determine number and location of

schools, employ teachers and fix their compensation, examine claims and draw orders therefor stating the purpose for which they are drawn. They are liable to the town for illegal payments. They appoint a clerk.

School Property is in charge of the town.

School Year shall be for at least thirty-four weeks.

Secret Societies are regulated and pupils may not join or solicit other pupils to join any secret fraternity, club or society, except such as are sanctioned by the Commissioner of Education and Superintendent; but temperance, religious and moral societies are excepted. Violations are punished by suspension, dismissal or deprivation of graduation and school honors.

State Board of Education consisting of five persons appointed by Governor, receive four dollars per day for actual time spent, and necessary expenses. Their main duties are: to employ a trained and skillful executive officer called the Commissioner of Education, and fix his salary. Through the Commissioner they prepare uniform courses of study, see that laws are enforced, supervise expenditures, inform the people as to educational conditions, make rules and regulations to guide subordinates, report to legislature. They shall appoint a sufficient number of Superintendents and designate the schools they are to supervise. But a town or incorporated district having twenty-five or more schools may appoint own Superintendent at a salary of not less than fifteen hundred dollars.

Rural Schools are such as have not more than two teachers.

Teachers shall keep registers to be delivered at end of each term, and no order is to be drawn for the last month's salary of the term until the register is approved. Certificate is required and contract is void unless certificate is obtained before opening school. No compensation shall be less than eight dollars per week. Contracts shall be in writing and in triplicate. Towns may vote to pension teachers who have taught thirty years, limited to one-half the salary formerly received. State also provides a retirement fund.

Text-Books, appliances and supplies are provided by the town, and with exceptions, are selected by the Board of School Directors, subject to approval of the Superintendent.

Transportation may be furnished to pupils, or the pupils' board paid nearby. Appeal may be had to the Commissioner whose decision is final.

Truancy is guarded against by the truant officer of the town. He may stop a child between eight and sixteen and take him to school. Complaints are made to the grand juror of the town.

Vocational Courses are supplied in high schools.

§ 175. Virginia.

Compulsory Attendance is required between eight and twelve for at least twelve weeks in each school year. Excused for weakness of body or mind, or if child can read and write, or is attending a private school, or lives more than two miles from school, or more than one mile from a free school wagon route. This act shall not prevail in any district until adopted by the voters.

County School Board consists of the Division Superintendent together with the school trustees of the county. Are body corporate. Estimate expenses. Apportion county fund.

District Board of School Trustees are three in number, appointed by school trustee electoral board. Are body corporate. Explain, enforce and observe school laws. Employ teachers and dismiss them. Suspend and expel pupils. Visit schools. Divide school districts into sub-districts. Must take oath.¹ Make rules for schools, including going to and coming from school.

Division Superintendents are appointed by State Board of Education. Powers and duties are fixed by the State Board of Education.

School Age is between seven and twenty, but children of six may be admitted if sufficiently mature, and others between twenty and twenty-five may be admitted on prepayment of tuition.

School Districts are each "magisterial" district unless State Board provides otherwise. Towns of more than five hundred inhabitants may, if council so elects, constitute a single school district.

Separate Schools must be maintained.

State Board of Education is corporation. Consists of Governor, Attorney General, Superintendent of Public Instruction, and other experienced educators. They divide the State into school divisions. Provide for examinations of teachers. Select text-books. Decide appeals from decisions of State Superintendent.

¹ Failure to do so creates a vacancy; *Childrey v. Rady*, 77 Va. 518.

Sub-District Directors explain and enforce laws. Examine claims. Contract with teachers for supplemental salaries. Determine supplementary school session.

Superintendent of Public Instruction is elected by people. Is *ex officio* president of State Board of Education, by whom his duties shall be described.

Teachers must hold certificates. Keep register and deliver it to clerk of School Board at close of term. Contract in writing. May suspend pupils.

Text-Books are contracted for by the State Board of Education not to exceed a term of seven years. Contracting publisher files bond. Free to indigent children.

Vaccination is required of teachers and pupils who within ten days after entering a public school shall furnish a physician's certificate either of successful vaccination or that such person is an unfit subject. In case of epidemic immediate vaccination may be ordered.

§ 176. Washington.

Compulsory Attendance, in a public or private school, is required between eight and fifteen and between fifteen and sixteen unless regularly and lawfully employed. Excused for physical or mental incapacity, or for having acquired proficiency in eight grades, or for some other reason. Where the United States, or State of Washington shall erect a school wherein the expense of tuition, lodging, food and clothing is borne by the United States, or State of Washington, compulsory attendance therein is required between five and eighteen for nine months each year, or during the annual term unless ex-

cused as above noted, or transportation is not furnished if residing more than ten miles from school.

County Boards of Education appointed by County Superintendent, consist of five members including County Superintendent who shall be *ex officio* chairman. All shall hold teachers' certificates. Grade manuscripts. Adopt text-books for five years, in districts of second division, which are those not maintaining a four years' high school. Adopt rules for schools.

County Superintendent is elected by voters of county. Supervises and visits schools of county. Corrects boundaries. Apportions school fund. Examines teachers. Conducts institute.

Electors may be of either sex.

School Age is between six and twenty-one. In kindergartens between four and six.

School Districts are each county. Are bodies corporate.

School Directors elected by voters of district consist of five members in districts of the first class, and three in those of second and third class. Employ teachers and fix their salaries on contracts that are printed or written and in duplicate. Enforce rules and course of study. Rent, repair, furnish and insure schoolhouses and employ janitors, laborers, and mechanics. Suspend and expel pupils. Provide free text-books and supplies in their discretion. Provide and pay for transportation of pupils living more than two miles from school in their discretion. Authorize schoolrooms to be used for other educational, religious, political, and scientific purposes.

School Term is at least six months.

State Board of Education consists of Superintendent of Public Instruction, president of the University, president of State College, principal of a normal school, and three holders of life diplomas. Care for higher educational requirements, prepare courses of study for secondary schools, prescribe rules for common schools, prepare questions for teachers' examinations, and for those completing grammar school course.

Superintendent of Public Instruction is elected by the people. Has general supervision of schools. Reports to Governor. Is *ex officio* president of State Board of Education. Holds annual conventions of County Superintendents. Issues certificates. Decides appeals from County Superintendents.

Teachers must be at least eighteen and have certificates. Report to County Superintendent. Keep register. May suspend pupils. Must attend institutes.

Text-Books (see *County Boards of Education; Text-Book Commission*).

Text-Book Commission of each school district of first division, which are those maintaining a four years' high school, select text-books for three years.

Truancy is guarded against by attendance officers appointed by Board of Directors in city districts. In all other districts the County Superintendent acts as attendance officer, and may appoint assistants. May take truant child into custody and to parent or guardian or to school.

Vaccination may be compulsory in city schools.

§ 177. West Virginia.

Boards of Education consisting of a president and two School Commissioners are elected for each district by the voters of the district. In certain larger districts the Board consists of five. Must take oath. Are body corporate. Have general control of schools.

Compulsory Attendance is required between eight and fifteen for twenty-four weeks, in a public school yearly. Excused for attendance elsewhere, or if no school within two miles of child's home. Employment certificates may be issued between fourteen and sixteen.

County Superintendent is elected by the voters in each county. Visits schools. Examines buildings. Conducts examinations of teachers.

School Age is between six and twenty-one. Also any other person may be admitted by permission of trustees or Board upon payment of tuition.

School Districts are divisions of a county, three to ten in each. They are each "magisterial" district, and are divided into sub-districts.

School Term is at least six months.

School Trustees, three in number, are appointed for each sub-district by the Board of Education in each district. Employ on written contract, teachers who do not hold certain relationship to any director. Visit and inspect schools. May allow schoolhouses to be used for certain other purposes.

Separate Schools shall be maintained.

State Board of Education consists of State Superintendent, and five others appointed by him. No two from the same congressional district, and not more than

three from the same political party. Prescribe courses of study and perform other duties prescribed by law.

State School-Book Commission consists of State Superintendent and eight others appointed by Governor. Receive bids and make contracts for text-books, not to be changed in five years. Contracting publisher shall give bond.

State Superintendent of Free Schools elected by the people has general supervision of schools, County and City Superintendents. Gives decisions on school law.

Teachers must be at least eighteen and hold certificates. May suspend pupils. Keep register and report. Attend institute.

Text-Books may be free, in discretion of the Board of Education of any district.

Transportation may be provided.

Truancy is guarded against by truant officers who give notice to parent or guardian, and make complaint before justice of the peace for non-observance. Parent or guardian may be convicted of misdemeanor.

§ 178. Wisconsin.

Boards of Education for larger cities consist of seven members known as Commissioners. Establish high, district, primary, night and kindergarten schools and have general supervision of them.

Compulsory Attendance is required between seven and fourteen, and between fourteen and sixteen unless regularly employed, in some public, parochial, or private school. Excused for mental or physical infirmity, or if living more than two miles from school, if transporta-

tion is not provided, or for proper and equivalent instruction elsewhere. Parents or guardians not complying may be fined or imprisoned.

County Boards of Education consist of five members, but may consist of three, elected where majority of districts vote for free text-books. All must have had experience as teachers. Select and adopt a uniform series of text-books not to be changed in five years. Contracting publisher shall file copies and give bond.

County Superintendent may be of either sex. Examines and licenses teachers. Visits districts. Conducts institute. Reports to State Superintendent.

District Board are director, treasurer and clerk elected by voters of district. Have care of schoolhouses and other property. May authorize use of schoolhouses for public meetings, and entertainments. Suspend and expel pupils. Make rules. Adopt text-books not to be changed in three years. Visit schools.

Electors may be of either sex.

School Age is between four and twenty, but District Board may admit free between twenty and thirty.

School Districts are made by Town Boards, and unless abolished is township system. Are bodies corporate.

State Superintendent of Public Instruction elected by the people has general supervision of the common schools. Reports to Governor. Supervises teachers' institutes. Performs all other duties imposed by law. Decides appeals.

Teachers must have certificates. Keep register and report. Have insurance and retirement fund.

Text-Books may be free in any district upon vote of district, and in any county upon vote of majority of districts. (See *County Boards of Education*.)

Transportation is provided in consolidated districts for pupils living more than two miles from school. May be provided in other districts.

Truancy is guarded against by truant officers appointed in larger cities by local Board of Education. In towns and villages sheriffs, undersheriffs, and deputies are truant officers.

§ 179. Wyoming.

Compulsory Attendance is required between seven and fourteen in a public, private or parochial school. Exceptions may be made of invalids, pupils to whom the enforcement of the act might prove a hardship, pupils who for legal reasons have been excluded and no provision made for schooling.

County Superintendent reports to State Superintendent. Acts with County Commissioners in dividing county into school districts. Visits schools. Recommends dismissal of incompetent teachers to school district trustees. Holds institutes.

Electors may be of either sex.

School Age is between six and twenty-one. In kindergartens between four and six.

School Districts are parts of a county and are bodies corporate.

School Trustees, three in number, are elected by voters of district. In districts of one thousand or more population the number may be increased to six. Make all

contracts necessary to carry out vote of district. Employ teachers. May remove scholars.

Separate Schools may be provided when there are fifteen or more colored children in each district.

State Board of Examiners of three appointed by State Superintendent prepare examination questions to be sent to County Superintendents. Examine papers and make rules regarding granting of certificates.

Superintendent of Public Instruction has general supervision of district schools. Prepares courses of study. Reports to Governor and to legislature. Conducts teachers' institute. Makes rules and regulations.

Teachers cannot receive compensation unless holding certificates. Keep register and make report.

Text-Books may be contracted for by School Directors, such contract not to be for more than five years. Contracting publisher must file bond. Are loaned to pupils free of charge. Pupils may purchase at cost.

Truancy is guarded against by sheriffs, deputy sheriffs, and truant officers if there be any. Give notice to parent or guardian and if notice is not complied with make complaint to justice of the peace who may convict of misdemeanor.

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